

Smt. Satya Devi and anr. Vs. Ravinder Kumar and ors.

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Court : Himachal Pradesh

Decided On : May-10-1989

Reported in : AIR1990HP43

Judge : N.M. Kasliwal, C.J.; V.K. Mehrotra and; V.P. Bhatnagar, JJ.

Acts : [East Punjab Urban Rent Restriction Act, 1949](#) - Section 2(1); ;Himachal Pradesh Urban Rent Control Act, 1987 - Sections 1(3) and 2; ;Himachal Pradesh Urban Rent Control Act, 1971 - Section 4

Appeal No. : Second Appeal No. 161 of 1981

Appellant : Smt. Satya Devi and anr.

Respondent : Ravinder Kumar and ors.

Advocate for Def. : Chhabil Dass, Adv.

Advocate for Pet/Ap. : K.D. Sood, Adv.

Judgement :

V.K. Mehrotra, J.

1. One Mirchu Ram was a tenant of the premises known as Shop No. 19 Ganj Bazar, Shimla. S/Shri Ravinder Kumar and Ashok Kumar are its owners. Mirchu Ram was a tenant from month to month. The tenancy was to come to an end with

effect from February 28, 1962. However, Mirchu Ram continued to remain in possession of the shop even thereafter. He was protected against his eviction by the provisions of the [East Punjab Urban Rent Restriction Act, 1949](#) (hereafter, 'the East Punjab Act') which was then in force in this area. Mirchu Ram died on January 12, 1970. He left behind his widow and a daughter as the two heirs. The widow died on February 9, 1972.

2. The Himachal Pradesh Urban Rent Control Act, 1971 (for brief, 'the Act of 1971') came into force in all urban areas in Himachal Pradesh with effect from November 17, 1971, when it was first published in the Himachal Pradesh Gazette (Extraordinary). At that time the widow was alive. Under Section 4 of this Act the widow was permitted to retain possession of the tenanted accommodation, till her death or remarriage, after the death of a tenant. Section 28 of this Act, which related to repeal and savings said, in the first proviso to Sub-section (2) that the provisions of Section 4 shall be applicable to all pending suits and proceedings for eviction against widows and shall be disposed of in accordance with the provisions of that Act. After the death of the widow the shop continued to be in possession of the daughter of Mirchu Ram, Smt. Satya Devi, and her husband, Prem Nath Sharma.

3. Civil Suit No. 154/1 of 1980 was instituted by the owners, Ashok Kumar and Ravinder Kumar, on August 25, 1980 for possession over this shop. What they said, in the main, was that after the death of Mirchu Ram, the tenancy came to an end because Mirchu Ram was a statutory tenant and the defendants were in illegal possession of the premises after his death. The defendants raised several pleas in defence. However, the Senior Sub-Judge, Shimla, passed a decree against them for possession of the property on December 26, 1980. He took the view that the tenancy of Mirchu Ram was not heritable because it was a statutory tenancy in which Mirchu Ram had a personal right of possession. That right came to an end after his death. Satya Devi and her husband, Prem Nath, assailed the decree in Civil Appeal No. 46-S/13 of 1981 before the District Judge, Shimla. The learned Judge dismissed it on October 3, 1981.

4. The view which found favour with the learned District Judge was that the defendants, Satya Devi and her husband Prem Nath, were the daughter and son-in-law of the statutory tenant. They could not have succeeded to the tenancy rights of Mirchu Ram. The learned Judge relied upon the decision of a Division Bench of this Court in *Dewan Chand v. Krishan Kumar*, ILR (1980) Him Pra 333.

5. Satya Devi and her husband assailed the decree against them in R.S.A. No. 161 of 1981. This appeal came up for hearing before T. R. Handa, J. of this Court. The learned Judge felt that the view of law expressed by the Division Bench in *Dewan Chand* was not correct, particularly, in view of two decisions of the Supreme Court. These decisions were in the case of *Damadilal v. Parashram*, AIR 1976 SC 2229 and *Smt. Gian Devi Anand v. Jeevan Kumar*, AIR 1985 SC 796. He felt that the decision in *Dewan Chand* called for a review. As such, he directed that the papers of the case be placed before Hon'ble the Chief Justice for constituting a larger Bench for making an authoritative pronouncement on the question whether the tenancy of Mirchu Ram could be treated to be heritable or not? This is how the matter has come up before us.

6. In the East Punjab Act a tenant was defined in Section 2(i) as ;

'tenant' means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building or rented land by its tenant, unless with the consent in writing of the landlord, or a person to whom the collection of rent or fees in a public market, cartstand or slaughter-house or of rents for shops has been framed out or leased by a municipal, town or notified area committee;'

7. This was the definition in force when Mirchu Ram died in January 1970. His widow continued to remain in possession of the shop till February 9, 1972, when she died. In between, the Act of 1971 had been enforced in Himachal Pradesh with effect from November 17, 1971. The possession of the widow had been protected under Section 4 thereof. Later, the Act of 1971 was replaced by the Himachal Pradesh Urban Rent Control Act, 1987, (briefly, 'the Act of 1987'). Under Section 1(3), this Act is also deemed to have come into force on November 17,

1971.

8. The 1987 Act defines a tenant in Section 2(j) it says :

'tenant' means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after termination of the tenancy and in the event of the death of such person such of his heirs as are mentioned in Schedule I to this Act and who were ordinarily residing with him at the time of his death, subject to the order of succession and conditions specified, respectively in Explanation-I and Explanation-II to this clause, but does not include a person placed in occupation of a building or rented land by its tenant, except with the written consent of the landlord, or a person to whom the collection of rent of fees in a public market, cartstand or slaughter house or of tents for shops has been framed out or leased by a municipal corporation or a municipal committee or a notified area committee or a cantonment board.

Explanation-I :.....

Explanation-II:.....

The First Schedule referred to in this Explanation mentions the following persons as the heirs who will be included in the definition of the word 'tenant' subject to the conditions mentioned in clause (j) of Section 2 :

1. Spouse;
2. Son;
3. Daughter;
4. Mother;
5. Father;
6. Widow of pre-deceased son;
7. Son of pre-deceased son;

8. Daughter of pre-deceased son.

9. In *Dewan Chand*, ILR (1980) Him Pra 333) the Division Bench spoke through V. D. Misra, C. J. Several decisions of the Supreme Court were noticed by the Bench. The conclusion, while dealing with the case of *Ball Ram* (R.S.A. No. 35 of 1971) (in paragraphs 14 to 19), which the Bench recorded was that *Ball Ram* was a statutory tenant. His tenancy was not heritable.

10. The case was decided by the Bench on the assumption that a 'statutory tenant' has no estate or interest in the premises occupied by him. He has merely the protection of the statute in that he cannot be turned out so long as he pays the standard rent and permitted increases, if any, and performs the other conditions of the tenancy. His right to remain in possession after the determination of the contractual tenancy is personal and it is not capable of being transferred or assigned nor does it devolve on his death except in the manner provided by the statute. Reliance, in the main, was placed upon the decision of the Supreme Court in *Anand Niwas (Private) Ltd. v. Anandji Kalyanji Pedhi*, AIR 1965 SC 414. This decision was approved by the Supreme Court in *J. C. Chatterjee v. Sri Kishan Tandon*, AIR 1972 SC 2526.

11. We are relieved of the necessity of discussing the question of heritability of tenancy in the case of statutory tenants on first principles in view of what the Supreme Court has itself said later. First, in *Damadilal*, AIR 1976 SC 2229, the Supreme Court, after noticing its decisions in *Anand Niwas (Private) Ltd.* and *J. C. Chatterjee*, said (in paragraph 11 of the report) that :

'..... The concept of a statutory tenant having no estate or property in the premises which he occupies is derived from the provisions of the English Rent Acts. But it is not clear how it can be assumed that the position is the same in this country without any reference to the provisions of the relevant statute. Tenancy has its origin in contract. There is no dispute that a contractual tenant has an estate or property in the subject-matter of the tenancy, and heritability is an incident of the tenancy. It cannot be assumed however, that with the determination of the tenancy the estate must necessarily disappear and the statute can only preserve his status of irremovability and not the estate he had in the premises in his occupation.....'

12. The case of Damadilal related to a house which was in Bazar Chowk in District Satna (in Madhya Pradesh) and had been let out to defendants for the purpose of their business.

13. A Constitution Bench of the Supreme Court went into the question again in Smt. Gian Devi Anand, AIR 1985 SC 796. It reviewed its earlier decisions. The Supreme Court noticed (in paragraph 22 of the report) that there was a divergence of opinion in the Court on the question whether the heirs of a deceased tenant, whose contractual tenancy in respect of commercial premises had been determined, could inherit the tenancy rights and claim the protection to which the deceased tenant was entitled under the Rent Act. It then observed (in paragraph 24 of the report) that :

'..... Though provisions of all the Rent Acts are not uniform, the common feature of all the Rent Control Legislation is that a contractual tenant on the termination of the contractual tenancy is by virtue of the provisions of the Rent Acts not liable to be evicted as a matter of course under the ordinary law of the land and he is entitled to remain in possession even after determination of the contractual tenancy..... In other words, the common feature of every Rent Control Act is that it affords protection to every tenant against eviction despite termination of tenancy except on grounds recognised by the Act.....'

14. Later, (in paragraph 25 of the report) it was observed (after referring to Damadilal's case, (AIR 1976 SC 2229)) that :

'..... it cannot be assumed that with the determination of the tenancy, the estate must necessarily disappear and the statute can only preserve the status of irremovability and not the estate he has in the premises in his occupation;.... As already noticed, this Court in Damadilal's case..... came to the conclusion that the so-called statutory tenant had an interest in the premises occupied by him and the heirs of the statutory tenant 'had a heritable interest in the premises.....'

15. The Supreme Court proceeded to examine the question further and referred to an earlier decision in the case of V. Dhanapal Chettiar v. Yesodai Anand, AIR 1979 SC 1745 (in paragraphs 29 and 30 of the report) and said that :

'..... The action of the landlord in instituting a suit for eviction on the ground mentioned in any State Rent Act will be tantamount to an expression of his intention that he does not want the tenant to continue as his lessee and the jurat relationship of lessor and lessee will come to an end on the passing of an order or decree for eviction. Until then, under the extended definition of the word 'tenant' under the various State Rent Act, the tenant continues to be tenant even though the contractual tenancy has been determined by giving a valid notice under Section 106 of the Transfer of Property Act.....It does not permit the landlord to snap his relationship with the tenant merely by his act of serving a notice to quit on im. In spite of the notice, the law says that he continues to be a tenant and he does so enjoying all the rights of a lessee.....

.....These observations, however, clearly go to establish that mere determination of the contractual tenancy does not in any way bring about any change in the status of a tenant...'

16. Eventually (in paragraph 31 of the report) the learned Judges concluded that :

'.....The termination of the contractual tenancy in view of the definition of tenant in the Act does not bring about any change in the status and legal position of the tenant, unless there are contrary provisions in the Act, and, the tenant notwithstanding the termination of tenancy does enjoy an estate or interest in the tenanted premises. This interest or estate which the tenant under the Act despite termination of the contractual tenancy continues to enjoy creates a heritable interest in the absence of any provision to the contrary.....'

17. The definition of a tenant, which the Supreme Court was considering in Gian Devi, (AIR 1985 SC 796), was almost the same as the one contained in the Act of 1987.

18. The law declared by the Supreme Court in its decisions in Damadilal, (AIR 1976 SC 2229) and Gian Devi (AIR 1985 SC 796), is absolutely clear and, it is this: The statutory tenant has an estate which is heritable subject to restrictions which may be imposed by the Rent Act in question.

19. The view, to the contrary, expressed by the Division Bench in Dewan Chand (ILR (1980) Him Pra 333) is not sound.

20. Handa, J. dealt with the question of heritability of the estate of a statutory tenant under the East Punjab Act in Rajesh Dhawan v. Darshan Singh Sethi, ILR (1985) Him Pra 129. He concluded (in paragraph 11 of the report) that for purposes of the Act there was no distinction between a statutory tenant and a contractual tenant and that there was no reason why a statutory tenancy should not be considered heritable.

21. A Division Bench of the Punjab & Haryana High Court held in Mohan Lal v. Ram Dass, (1980) 1 Ren CJ 607, that the rights of a statutory tenant under the East Punjab Act were heritable. This view was followed by that Court in Parkash Chand v. Kishen Chand, (1982) 1 Ren CJ 729.

22. It is not in dispute that on January 12, 1970, when Mirchu Ram died he was a statutory tenant. Upon his death, on the definition of a tenant under the East Punjab Act, his estate became heritable by his heirs, namely, the widow and the daughter. The view that Mirchu Ram had only a personal right of possession, founded upon the rule laid down by the Division Bench in Dewan Chand, (ILR (1980) Him Pra 333) was not correct. The correct view of law is that the tenancy of a statutory tenant, like Mirchu Ram, was heritable. The question whether the present appellants can claim any protection now also will have to be determined in accordance with the provisions of the 1987 Act which came into effect from November 17, 1971, that is, prior to the death of the widow of Mirchu Ram. The appeal may now be listed before a learned single Judge for final disposal in the light of the answer given by us.