

(2012) 04 RAJ CK 0049
In the Rajasthan High Court
Case No : Civil Writ Petition 9499 of 2010

Jagdish Prasad Joshi

APPELLANT

Vs

Appellate Rent Tribunal, Jodhpur and Others

RESPONDENT

Date of Decision : 05-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10A, Order 22 Rule 5
Constitution of India, 1950 — Article 226

Citation : (2012) 1 RCR(Rent) 522 : (2012) 3 RLW 2610

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Advocate : M.S. Singhvi, with Mr. Manish Patel, for the Appellant; J.R. Patel, for the Respondent

Judgement

Gopal Krishan Vyas, J.—In this writ petition, an information was given by the respondents that respondent 3 Avtar Singh has died on 25.12.2010 and his legal representatives have been working in the disputed shop as family members of the deceased tenant since his lifetime, therefore, legally it is duty of the petitioner to take necessary steps in the regard because the legal representatives of the deceased tenant are carrying on business as tenants in the disputed shop. The above information was given under Rule 10-A of Order 22, C.P.C., read with Article 226 of Constitution of India. A reply to the application was filed by the petitioner, in which, it is stated that no death certificate of late Avtar Singh has been filed, therefore, the information sought to be given is absolutely vague and further it is pleaded has so far as the question of bringing legal representatives of late Avtar Singh on record is concerned, the tenancy in question relates to the premises let out for commercial purpose, therefore, in terms of Section 1(i)(b) of the Rent Control Act, 2001 the legal heirs of the deceased tenant shall not step into the shoes of the tenant because they will not fall within the definition of tenant because tenancy is not heritable.

2. It is also specifically pleaded that before the trial Court it has never been the

case either in the written-statement or in the affidavit filed by the deceased that any one of his family-members is carrying on business with him. On the contrary, in categorical terms it is stated in the written-statement as well as in the affidavit that he is carrying on business with persons arrayed as respondents in the application submitted before the Rent Tribunal, therefore, it is prayed that in view of the clear pleadings and the case set out before the Rent Tribunal and Appellate Rent Tribunal the respondents cannot set up excluding the pleadings and material on record. Therefore, it is prayed that if the factum of death of respondent Avtar Singh may be struck off from the array of parties as respondent 3.

3. For the prayer made in the reply to the application filed under Order 22 Rule 10-A, C.P.C. by the respondents with regard to deletion of name of deceased Avtar Singh, objection has been raised that prayer of the petitioner (landlord) regarding deletion of name of Avtar Singh from the array of respondents cannot be allowed for the following reasons :

(A) Late Avtar Singh was carrying on his business in the name and style of M/s. Indrajeet General Store during his life-time and, during his life-time, his family members viz., Rajendra Kaur, wife, Satpal, son and two daughters were also carrying out kirana business in the premises in question as his family members. The wife of late Avtar Singh and two daughters were always helping him in the business; therefore, the contention of landlord that tenancy right has not been devolved upon his family members upon his death is totally false.

(B) Unless and otherwise opportunity of hearing is offered to the legal representatives of late Avtar Singh it cannot be adjudicated whether the legal representatives of late were carrying on kirana business in the disputed premises with him as his family members during his life-time or not. Therefore, for that purpose opportunity of hearing is necessary to the legal representatives of late Avtar Singh.

(C) As per Rule 5 of order 22 of the CPC where a question arises whether a person is or not legal representative of deceased tenant such question shall be decided after providing opportunity of hearing to both the parties. It is also pleaded that as per proviso to above rule if such question arises before the appellate Court, then, that Court before determining the question, direct any subordinate Court to return the record together with evidence if any recorded at such trial. Therefore, as per mandatory provisions of law, the present dispute with regard to tenancy right of the legal representatives of late Avtar Singh is required to be determined by the Rent Tribunal after providing opportunity of hearing to both the parties. Therefore, the matter may be remitted to the Rent Tribunal for determining the question of tenancy rights of the legal representatives of late Avtar Singh.

4. Learned counsel for the respondents, in support of the above grounds, submits that during the life-time of late Avtar Singh the family members who are

legal representatives of deceased tenant Avtar Singh were also helping and pursuing business with late Avtar Singh, therefore, they inherited tenancy right after his death and as such the name of respondent 3 Avtar Singh cannot be deleted; more so, the legal representatives of late Avtar Singh were required to be taken by the petitioner. In support of his contention, learned counsel for the respondents invited my attention towards judgment of Supreme Court, reported in Kanhiya Singh Santok Singh and Others Vs. Kartar Singh, and submits that the question of fact cannot be decided without permitting the parties to lead evidence in support of their respective claim, therefore, the matter may be remitted to the Rent Tribunal for determining the question whether the legal representative of late Avtar Singh inherited the tenancy right or not. Learned counsel for the respondents invited my attention towards definition of "tenant" incorporated in the Rajasthan Rent Control Act, 2001.

5. Per Contra, learned counsel appearing on behalf of the petitioner submits that in the written-statement and in the affidavit filed by late Avtar Singh before the Rent Tribunal it was nowhere pleaded that his family members are carrying on business with him. On the contrary, he has in categorical terms stated in his written-statement as well as affidavit that he is carrying on business with persons arrayed as respondents in the application submitted before the Rent Tribunal, therefore, there is no question of holding any inquiry with regard to right of the legal representatives for inheriting the tenancy right after death of deceased tenant Avtar Singh. Therefore, Rule 5 of Order 22, C.P.C. will not apply in this case because of absence of any pleading before the Court.

6. It is also submitted that the Rent Tribunal allowed the application filed by the petitioner u/s 9 of the Rent Control Act, 2001 for eviction from the premises in question on the ground of sub-letting, bona fide necessary and material alteration; but the appellate Court reversed the finding and set aside the judgment dated 23.01.2007 passed by the Rent Tribunal, Jodhpur; meaning hereby the appellate Court accepted the plea of late Avtar Singh with regard to partnership with respondents 4 and 5 and in the objection raised by the respondents it is pleaded that wife and two daughters of late Avtar Singh were pursuing business with Avtar Singh and as such new ground and fact is submitted before the Court the rejecting the prayer of the petitioner to strike off name of deceased tenant Avtar Singh. The respondents cannot now take somersault from their own pleading before the Rent Tribunal or before the Appellate Rent Tribunal, therefore, the grounds raised by the respondents for rejecting the prayer of the petitioner to strike off name of Avtar Singh are not sustainable in law. In support of his contention, learned counsel for the petitioner invited attention of this Court towards judgment reported in 2019(1) R.C.R. (Rent) 208 : AIR 2009 Raj 174, Lrs of tribhuvan Dutt v. Jai Narayan and 2002 WLC (SC) 42, C.K. Abdul Rehman v. B.C. Putta Thayamma, in which, it is held that there must be pleading and finding of fact on record that wife, daughter and sons of the deceased tenant were carrying on business with him up to the date of his death, which is totally absent in the present case, therefore, the prayer of the

petitioner may be accepted and name of deceased tenant Avtar Singh may be struck off from the array of respondents.

7. After hearing both the parties, I have perused the prayer clause made in the reply to the application filed under Rule 10-A of Order 22, C.P.C., so also, reply to the application for deletion of name of deceased tenant Avtar Singh, in which, aforesaid grounds were taken.

8. There is no dispute with regard to adjudication made in the judgment of the Hon"ble Supreme Court that for determination of question whether the legal representatives were pursuing business with deceased, therefore, they inherited the tenancy right or not, the matter is required to be referred to the trial Court under Order 22 Rule 5, C.P.C. There is no quarrel with regard to the adjudication made by Hon"ble Supreme Court in the case of Kanhaiya Singh Santokh Singh (supra). I have also perused the definition of tenant which reads as under :-

"(i) "tenant" means-

(i) The person by whom or on whose account or behalf rent is, or but for a contract express or implied, would be payable for any premises to his landlord including the person who is continuing in its possession after the termination of his tenancy otherwise than by an order or decree for eviction passed under the provisions of this Act; and

(ii) In the event of death of the person referred to in sub-clause (i),-

(a) In case of premises let out for residential purposes, his surviving spouse, son, daughter, mother and father who had been ordinarily residing with him in such premises as member of his family upto his death;

(b) In case of premises let out for commercial or business purposes, his surviving spouse, son, daughter," mother and father who had been ordinary carrying on business with him in such premises as member of his family upto his death; and

9. Upon considering above judgment and definition of "tenant" it is abundantly clear that there must be pleading in the written-statement that his wife and other members of the family are pursuing business with him. I have also perused the written-statement filed but no such fact is brought to the notice of the Rent Tribunal during trial or before the Appellate Rent Tribunal that the wife and daughters of late Avtar Singh were carrying on business with him, therefore, it cannot be presumed that they were carrying on business in the premises in question with the tenant during the life-time of tenant late Avtar Singh. On the contrary, specific plea was taken by the respondent late Avtar Singh that he is carrying on business in partnership with the respondents 4 and 5, therefore, their plea of partnership was accepted while deciding the appeal by the Appellate Rent Tribunal. Therefore, on the basis of the pleading taken in the written-statement it is not required to remit the case to the Rent Tribunal, Jodhpur for the purpose of determining the question of inheritance of tenancy right by the local representatives of deceased tenant Avtar Singh. Therefore, upon the facts

of the present case the judgment cited by learned counsel for the respondents is not applicable.

10. In the judgment rendered by the co-ordinate Bench of this Court in the case of LRs. of late Tribhuvan Dutt v. Jai Narayan, cited by the petitioner, it has been categorically held that there must be a finding of fact that wife and 3 sons of the deceased tenant were carrying on business with him; but, here, in this case, till filing objection before this Court upon prayer made by the petitioner to strike off name of deceased tenant Avtar Singh who died during the pendency of this writ petition, no such plea of pursuing business by the wife and daughter has been brought on record either before the Rent Tribunal or before the Appellate Rent Tribunal which is pre-condition as per the definition of "tenant" provided in the Rent Control Act, 2001, more so, specific plea was taken with regard to doing business in partnership with respondents 4 and 5, upon which, the Appellate Rent Tribunal reversed the judgment of the Rent Tribunal. In my opinion, the objection raised by the respondents in their reply to the prayer of the petitioner for striking off name of late Avtar Singh has no force. Therefore, the prayer of the petitioner to strike off name of deceased tenant Avtar Singh from the array of respondents is hereby accepted. The name of deceased tenant Avtar Singh is hereby stricken off from the array of respondents. The petitioner is directed to file amended cause-title within ten days.