

(1996) 10 AHC CK 0091
In the Allahabad High Court
Case No : Second Appeal No. 624 of 1996

Kamla Devi and Anr.

APPELLANT

Vs

Vimal Kumar Jain & Ors.

RESPONDENT

Date of Decision : 19-10-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Transfer of Property Act, 1882 — Section 106

Citation : (1996) 10 AHC CK 0091

Hon'ble Judges : S.K.Phaujdar, J

Final Decision : Dismissed

Judgement

S.K. Phaujdar, J.—This second appeals directed against the judgment and decree dated 2451996 passed by the VIIth Additional District Judge, Kanpur Nagar, in Civil Appeal No. 98 of 1992 whereby he had reversed the judgment and decree dated 29592 recorded by the IInd Additional Civil Judge, Kanpur Nagar, in Suit No. 3 of 1971 decreeing the suit of the plaintiffs against the defendants (present respondents.).

2. The suit was brought before the Civil Judge originally by Smt. Rewti Devi, widow of Lala Chiranji Lal, making, amongst others, Smt. Kamla Devi, a cowidow, a respondent. Subsequently, on the death of Smt. Rewti during the pendency of the suit Smt. Kamla Devi was transposed as a plaintiff.

3. The suit of the plaintiffs was for a declaration that the decree passed in suit No. 2493 of 19(56 (Vimal Kumar Jain v. Vijai Kumar Khandelwal) was void. The suit was also for permanent injunction against the aforesaid Vimal Kumar Jain and others. It was stated in the suit that Lala Chiranji Lal was the proprietor of M/s. Aruna Iron Trading Company and for the purpose of the business of this Firm a gowown was taken on rent. Smt. Rewti was the first wife, no children were borne through her and Lala Chiranji Lal married Smt. Kamla Devi for the second time and she gave birth to Vijai Kumar and Narain Khandelwal. The landlords for the tenanted premises were the aforesaid Vimal Kumar Jain and others.

4. It was alleged that on the death of Chiranji Lal in the year 1961 the tenancy was inherited by Smt. Rewti and Smt. Kamla Devi and two sons of Smt. Kamla Devi. The Proprietorship of the Firm Aruna Iron Trading Company was also inherited by these persons. Vimal Kumar Jain and others, the landlords of the godown, had filed a Suit No. 2493 of 1966 against the two sons of Chiranji Lal, namely, Vijai and Narain, and got a decree of eviction. The decree of the Additional Munsif dated 21469 recorded in that suit was challenged in a Civil Appeal by Vijai and Narain and this Civil Appeal was also dismissed on 25769. Vijai and Narain filed a second appeal before the High Court in Second Appeal No. 1755 of 1969 and this second appeal was also dismissed on 25970. No notice of eviction was served on Smt. Rewti Devi and Smt. Kamla Devi, widows of Chiranji Lal nor were they made parties in the earlier suit and the decree in the aforesaid Suit No.2493 of 1966 was not binding against Smt. Rewti and Smt. Kamla Accordingly, the aforesaid prayers were made and Vimal Kumar Jain and others were sought to be enjoined from creating any disturbance in the possession of Smt. Rewti and Smt. Kamla in the suit godown as tenant. The suit was contested by the first three respondents who were successors to the original landlords and they filed a written statement. But it was accepted that Vijai and Narain and M/s. Aruna Iron Trading Company were tenants in respect of the fodown. It was denied that the plaintiffs mt. Rewti and Smt. Kamla were ever the tenants therein. It was stated that Vijai and Narain were surviving partners of M/ s. Aruna Iron Trading Company and they were rightly impleaded as tenants in place of Lala Chiranji Lal in the earlier suit and a proper decree was passed therein. Smt. Rewti and Smt. Kamla were never tenants in the godown and they were not necessary parties nor had they any possession in the godown. They could not have claimed notice of eviction in the earlier suit Vijai Kumar Khandelwal and Narain Kumar Khandelwal never missed any plea that Smt. Kamla or Smt. Rewti was a necessary party. At the trial several issues were framed touching the question if Smt. Kamla and Smt. Rewti were the wives of Lala Chiranji Lal and if they were tenants in the alleged accommodation. A further question was at issue before the trial court as to whether the decree in Suit No. 2493 of 1966 was binding against Smt. Kamla and Smt. Rewti and if Smt. Kamla was a cotenant for the godown and if the suit was time barred or was barred by the principles of acquiescence and estoppel. The trial court decreed the suit in favour of Smt. Kamal Devi and declared that the earlier decree in Suit No. 2493 of 1966 was void so far Smt. Kamla was concerned and she was not bound by it. Smt. Rewti was dead by that time and she was represented by Harish Kumar Khandelwal grandson of Chiranji Lal Khandelwal. There was no decree in favour of Harish Kumar Khandelwal. It was declared that Smt. Kamla Devi was a coowner of M/s. Aruna Iron Trading Company and was a cotenant with Vijai and Narain for the godown in question. Accordingly the first three respondents were directed not to dispossess Smt. Kamla Devi in pursuance to the decree of eviction in Suit No. 2493 of 1966.

5. The first three respondents preferred Civil Appeal No. 98 of 1992. No. cross

appeal or cross objection was preferred by Harish Kumar Khandelwal. In this first appeal the learned Judge found that there was only one legal issue in the suit as to whether, on the death of Chiranji Lal, his heirs became tenants in common or joint tenants. He held that his heirs became joint tenants and in his view when the right of one amongst several joint tenants was determined up to the High Court, it was binding on all other joint tenants. The learned Judge was further of the view that the learned court below recorded a wrong finding on a supposition that they were tenants in common. Accordingly the suit was dismissed. In the judgment there was a further observation that Smt. Kamla Devi had made an admission that she had approached the High Court in that earlier suit and the first appellate Judge held that upon this admission it must be held that Kamla's rights were also determined and so the suit was barred by limitation.

6. The present appeal was preferred by Smt. Kamla Devi and Harish Kumar Khandelwal (as an heir to Smt. Rewti). Before presentation of the appeal a caveat was lodged on behalf of Vimal Kumar Jain and others. A preliminary objection was taken on the ground that Harish Kumar Khandelwal could not prefer this second appeal as the trial court had decreed the suit in favour of Smt. Kamla Devi only meaning thereby that suit of Smt. Rewti (Harish Khandelwal in her place) was dismissed and his first appeal was preferred by Harish Khandelwal. Upon that preliminary objection it was ordered on 17/7/96 that in the absence of approaching the court in a first appeal Harish Khandelwal had no right to move a second appeal.

7. For Kamla Devi, however, the matter was heard elaborately touching the points of her competence to file this appeal as also the points touching the merits of the case. In this connection on the submission of the learned counsels the Judgment of the Second Appeal No. 1755 of 1969 was also called for and looked into.

8. It was submitted on behalf of the appellant Smt. Kamla Devi that she was a widow of Lala Chiranji Lal and she inherited not only to the business but also to the godown as a tenant and she should have been given an eviction notice and the decree against her sons alone could not have bound her. It was further submitted that the learned first appellate court committed grave errors of law (sic) when he held that Smt. Kamla had approached the High Court. In fact Kamla had never approached the High Court and in this connection this it felt that the judgment in Second Appeal No. 1755 of 1969 was to be seen for arriving at a judgment on the point raised. Accordingly that judgment was seen. The learned counsel for the appellant relied on a decision of the Division Bench of the Allahabad High Court as reported in A.R.C. 1977 at page 384. In this decision a distinction was made between the "joint tenants and tenants in common" and validity of notice to one of the several tenants in common was also decided. Relying on an earlier decision of the Allahabad High Court it was held that on the death of a tenant his heirs succeed to his right not as joint tenants but as tenants in common. Reference was made to the meaning of the term joint tenants

and tenants in common to say that a joint tenancy denoted unity of title, possession, interest and commencement of title whereas in a tenancy in common there may be unity of possession and commencement of title but the other two features i.e. the unity of the title and unity of interest would be absent. It was held that "the basic distinction between joint tenants and tenants in common is that in the case of joint tenants there is unity of the title and possession while in the case of tenants in common there is unity of possession but no unity of title". It was accordingly held that a notice under Section 106 of the T.P. Act on one of several tenants in common would not effectively terminate the tenancy of the other. Reliance was also placed by the appellants on a decision of the Supreme Court as reported in 1985 A.R.C. (I) at page 1. It was a case where the original tenant died and his nephew, on the strength of the Will made by the original tenant, claimed the rights in the property as a tenant. In this connection it was observed that for the purpose of Section 3(1) of the U. P. Act 13 of 1972 the appellants could have been a tenant only if he was an heir. The learned counsel proposed to infer from this case law that all heirs of a deceased tenant ought to be recorded as tenants. On behalf of the caveator respondents reliance was placed on the decision as reported in 1994(1) ARC 172. It was a case where the tenant died during the pendency of the appeal against the order passed on release application. The landlord substituted the tenant by her widow sons and daughters. Another person, claiming herself as a daughter of the tenant, filed a writ application alleging that she was not substituted by the landlord and the order of release was non est and could not be executed against her. This plea was disallowed by the High Court in its writ jurisdiction on the ground that the other heirs were already on record and the interest of the claimant was not prejudiced simply for her nonimpleadment. The release was made in this case on the ground of the dilapidated conditions of the house in question. This case law in my view, does not touch the dispute now raised as to whether the appellant was a joint tenant or tenant in common or if the absence of the notice under Section 106, T.P. Act would affect an earlier decree. Reliance was also placed on the decision as reported in 1996 High Court Views Daily (C) Volume I at page 143. It was held herein that in any proceedings if a joint tenant is impleaded as a party he represents the interest of all joint tenants. This was also a case concerning release under the U.P. Act 13 of 1972.

9. The learned counsel for the respondents also placed before me a decision of the Lucknow Bench of Allahabad High Court in a writ petition, as reported in A.R.C. 1992 (1) at page 275. It was a case where a suit for eviction was filed against one of the heirs of the deceased tenant and the suit was decreed ex parte. An appeal was filed which failed and thereafter the decree was put into execution. At that stage certain other heirs of the deceased tenant came forward challenging the decree on the ground that they were not made parties although they succeeded as tenants in common. The suit remain pending since 1986 and exercising the writ jurisdiction, the Court was of the view that the subsequent suit was only a measure for abusing the process of a Court and the proceedings

of the suit were quashed. In this case reference was made to a decision of the Supreme Court in the case of H.C. Pandey v. J.C. Paul as reported in 1989 (2) A.R.C. at page 16, wherein it was observed that "on the death of the original tenant, subject to any provisions to the contrary either negating or limiting the succession, the tenancy right devolve on the heirs of the deceased tenant. The incident of the tenancy are the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs. There is no division of the premises or of the rent payable therefor. That is the position as between the landlord and the heirs of the deceased tenant. In other words, the heirs succeed to the tenancy as joint tenants". It was further held by the Lucknow Bench of Allahabad High Court in this decision, following a dictum of the Supreme Court (A.I.R. 1963 Supreme Court 468), that in the case of joint tenancy notice to one of the joint tenants was sufficient and the suit was also good against one of them.

10. Although several other decisions were relied on by the respondents, in my view, the decision of the Supreme Court as reported in 1989 (2) A.R.C. at page 26 sets at rest the dispute raised in the present appeal. This case between H.C. Pandey and J.C. Paul went to the Supreme Court on a question if after the death of a deceased tenant, when a suit is filed for eviction, notice under Section 106, T.P. Act was necessary on all the heirs. It was held, as quoted above, that the incident of tenancy are the same for the heirs of the deceased tenant as those enjoyed by the original tenant. It was a single tenancy that devolved on the heirs. There was no division of the premises or of the rent payable therefor by the heirs, and according to this decision of the Supreme Court. The heirs succeed to the tenancy as joint tenants and notice served on the respondents was held sufficient. In the case at our hands Smt. Kamla Devi, under the interpretation of the law made by the Supreme Court, could be a joint tenant of the godown in question. It is not disputed that the godown was being used for the purpose of the business of M/s. Aruna Iron Trading Company and the business was also joint between Smt. Kamla and her two sons Vijai and Narain. Thus notice under Section 106, T. P. Act on the two sons was sufficient and the suit of 1969 would not be bad for nonjoinder of Kamia Devi as a defendant. The first appellate court had approached the matter from the proper angle and the first appellate decree, therefore, may not be interfered with.

11. The other points raised by the appellants may not be discussed as even a finding in favour of the appellants on those points may not affect the first appellate court's judgment on the basis of the aforesaid Supreme Court decision. The appeal accordingly stands dismissed.