

(1997) 06 SHI CK 0008

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 191 of 1988

Kishan Lal and Others

APPELLANT

Vs

Gian Chand deceased through his legal representatives Satya
Devi and Others

RESPONDENT

Date of Decision : 25-06-1997

Acts Referred:

Himachal Pradesh Urban Rent Control Act, 1987 — Section 2

Citation : (1997) 3 ShimLC 95

Hon'ble Judges : P.K. Palli, J

Bench : Single Bench

Advocate : Bhupender Gupta and Menka Chauhan, for the Appellant; Anand Sharma, for Respondent Nos. 1(a) to 1(e), for the Respondent

Final Decision : Dismissed

Judgement

P.K. Palli, J.—This second appeal has been filed by the Defendants. Suit, for possession of the shop in question, stands decreed in favour of the Plaintiff and the decree passed by the learned trial Court affirmed by the learned first appellate Court. The parties, hereinafter in this judgment, shall be referred to as "Plaintiff" and "Defendants".

2. Admittedly. Gian Chand. Plaintiff, is the owner of the shop in question. Chandu Lal, the predecessor-in-interest of the Defendants was a statutory tenant in the said shop and he admittedly died on June 19, 1979. The Defendants are his major sons and married daughters.

3. The Plaintiff claimed that the Defendants are in illegal possession after the death of the statutory tenant, Chandu Lal. Damages were also claimed for use and occupation of the premises by the Defendants.

4. The suit has been contested by Defendant No. 1 only and the other Defendants were proceeded against ex parte. The plea which has been set up by Defendant No. 1 is that his wife Kaushalya Devi was a tenant with effect from June, 1976

and this was with the consent of the Plaintiff It is said that Chandu Lal, the father-in-law and Kaushalya Devi, his daughter-in-law, were both running the business of manufacturing "Chappals" in the shop in dispute and she continues to be the sole tenant in the said shop after the death of Chandu Lal.

5. The plea raised by the contesting Defendant has not been accepted by the learned Courts below resulting in the decree as claimed for by the Plaintiff

6. Mr. Bhupender Gupta, learned Counsel appearing for the Defendants, contends that the tenancy is heritable and the heirs of the deceased tenant will step into his position after the death and are entitled to the protection afforded under the Rent Control legislation. It is next contended that the learned Courts have committed material irregularity in holding that Chandu Lal alone was the tenant in the premises

7. Mr. Gupta further proceeds to contend that as per pleas raised in the plaint, the Civil Court shall have no jurisdiction to try the suit and the relief claimed by the Plaintiff could be entertained and granted exclusively by the Rent Controller.

8. Mr. Anand Sharma, learned Counsel appearing for the Plaintiff, in reply, adopts the same line of reasoning, as has been projected by the learned Courts below in the impugned judgments.

9. After hearing the learned Counsel for the parties in detail and after perusing the impugned judgments and the record, I find that there is no merit in this appeal.

10. Undisputedly, Chandu Lal alone was the tenant in respect of the shop in question prior to 1976. The plea raised by the contesting Defendant is that his wife Kaushalya Devi was inducted as a tenant with the consent of the Plaintiff in the year 1976.

11. The creation of tenancy is a bilateral act. No piece of evidence has been pointed out to me that the Plaintiff at any point of time after 1976, accepted Kaushalya Devi as tenant No rent receipt has been placed on record Both the learned Courts below, on appreciation of evidence, have concurrently found that no case has been made out that Kaushalya Devi was inducted as a tenant in respect of the shop in question,

12. There is an interesting feature that Kaushalya Devi has not been impleaded as a party to the suit No application on her behalf was ever filed for being impleaded as a party, though she appeared as a witness in the case in support of the pleas raised by Defendant No. 1, her husband Her husband is, admittedly a Project Officer in the service of State Government. He has been transferred from one place to another from time to time and she had admitted that she has been living with her husband at the places of his postings. No account-books or any other material has been placed on record to show that she has been running the business in the said shop after the death of her father in law.

13. The matter has to be dealt with keeping in view the provisions in that respect as contained in the Himachal Pradesh Urban Rent Control Act, 1987. The case pleaded by the contesting Defendant is not covered by the explanation-I added to the definition of tenant as given in Section 2(j) of the said Act. Both the learned Courts below after noticing the provisions contained in the Rent Control Act have concluded that the case of the contesting Defendant is not covered by the Explanation-I added to the definition of the tenant.

14. Even the statement made by Kaushalya Devi, which has been noticed in detail by the learned first appellate Court, does not advance her case any further as pleaded by her husband, Defendant No. I.

15. The argument raised by Mr. Gupta that the tenancy in question which pertains to the shop in dispute is heritable, on the face it appears to be quite attractive. It is being argued by him that all the three major sons and the married daughters of deceased tenant would inherit the tenancy rights in common on the demise of the deceased tenant, who was their father. It may be noticed here at this stage that the wife of the deceased tenant had already pre-deceased him. In support of his contention, Mr. Gupta, relies upon a judgment of the Supreme Court reported in Gian Devi Anand Vs. Jeevan Kumar and Others, which was a case under Delhi Rent Control Act and the tenancy in that case was statutory in respect of commercial premises. It was held that the heirs of the statutory tenant are entitled to the same protection against eviction as afforded to a tenant under the Act.

16. Reliance is next placed on a judgment of this Court reported in Narinder Kumar and Anr. v. Ramesh Kumar and Anr. 1995 (1) Sim LC 104. That was a case of residential premises and the sons claimed inheritance of tenancy rights as they were residing with the tenant at the time of his death. It was held that by virtue of Section 2(j) of Act, 1987, the sons inherited the tenancy rights and were not liable to be ejected.

17. Reliance has also been placed on a judgment of this Court reported in Smt Satya Devi and Anr. v. Shri Ravinder Kumar and Ors. 1989 (2) Sim LC 183. In this judgment after examining the definition of tenant as given in Section 2(j) of the Act it was held that statutory tenant has an estate which is heritable subject to restriction which may be imposed by the Act itself. The tenancy in the given situation was held to be heritable.

18. In my considered view, the arguments being raised by Mr. Gupta just cannot be appreciated in view of the fact that no such plea was raised by any of the Defendants in the present case. In this situation, the case law cited at the bar would be of no help to him. It is at this stage that I deem it necessary to take notice of the pleas set-up in defence in the written statement filed by Defendant No. 1, who alone contested the suit.

19. In this brief written statement, Defendant No. 1 has stated in paragraph I that it was not only Chandu Lal, who was tenant, but Kaushalya Devi was tenant

alongwith him from June 1976 with the consent and concurrence of the Plaintiff. It has been admitted that only Chandu Lal was the tenant earlier

20. In paragraph 2, it has been said that Kaushalya Devi and Chandu Lal both were tenants in possession under the Plaintiff and on the death of Chandu Lal, Kaushalya Devi alone continued to be the tenant in possession on the said rent till date It was further said that Kaushalya Devi is a necessary party and the suit cannot proceed in her absence.

21. In paragraph 3 of the written statement filed by Defendant No, 1, it is said that the joint tenancy of Kaushalya Devi and Chandu Lal deceased does not come to an end on the death of Chandu Lal and Kaushalya Devi continues to be the sole tenant in possession after him and the Plaintiff has been receiving rent from her,

22. In paragraph 4 it is again said that Kaushalya Devi is in sole possession of the shop as tenant.

23. These are the only pleas which the Defendant has taken and none else.

24. It was totally a different case if the Defendants had pleaded that all of them in common have inherited the tenancy rights on the death of their father, who was tenant in the shop in question. They have not said a word about it either in the written statement or during the hearing of the suit or appeal The point has been raised for the first time in second appeal before this Court and Mr. Gupta is at pains to contend that since the argument is purely legal and goes to the root of the case, as a question of jurisdiction is involved, the same should be appreciated by this Court.

25. I am again of the opinion that the argument could be considered being purely a legal question, but in view of the Act and conduct, as pleaded by Defendant No. 1, it has no merit.

26. In fact the whole thrust of Defendant No. 1, as projected in the written statement by him,, is that Kaushalya Devi alone is the tenant in respect of the shop in question and she alone is in possession of it. The way I look at the matter, there is no escape except to conclude that it is Kaushalya Devi, who is fighting this litigation by proxy through her husband,

27. Interestingly, none of the other Defendants who are the heirs of the deceased tenant have, opted to contest the suit It would also mean that they have accepted the plea raised by Kaushalya Devi, wife of Defendant No. 1, through him

28. Once it is found that Kaushalya Devi was never inducted or accepted as a tenant by the Plaintiff and the plea raised by her through her husband, Defendant No, 1, has been found to be false, the Defendants could not now be permitted to urge that they have inherited the tenancy rights in common on the demise of their deceased father, who was the tenant in respect of the shop in

question.

29. Defendant No. 1 having set-up the plea that his wife being the sole and exclusive tenant, cannot be permitted to urge that if the plea raised is found false, he was entitled to succeed as the tenancy stands inherited by him alongwith the other heirs of the deceased tenant. The case law, thus, cited by the learned Counsel is clearly distinguishable in the peculiar facts and circumstances of the present case.

30. I am also unable to agree with the contention raised by Mr. Gupta that the plaint in view of the averments made therein does not disclose any cause of action It has been clearly indicated in para-3 of the plaint that the Defendants are major sons and major married daughters of the deceased The tenancy ended with the death of deceased tenant and is not heritable under the Rent Control Act and the Defendants are in illegal possession of the said shop. It is on the basis of these averments that Mr. Gupta has raised the contention that the averments made as such clearly ousted the jurisdiction of the Civil Court and the eviction of the Defendants could be sought only under the Rent Control Act.

31. In the corresponding reply to this para, it has been stated that the joint tenancy of Kaushalaya Devi and Chandu Lal has not come to an end and Kaushalaya Devi continues to be the sole tenant in possession on rent which the Plaintiff has been receiving from her,

32. The case, what is being argued for the first time during the hearing of this appeal, has never been projected in the written statement and, therefore, no benefit can be granted to the Defendants in respect of inheritance of tenancy and protection of their rights, as is being urged.

33. The case has been contested on the sole plea of tenancy in favour of Kaushalaya Devi having been created in her favour in the year 1976. No other point was even remotely pleaded or stressed This point having been found false, shall not cloth the other Defendants to claim an independent right having vested in them by operation of law Infact they would be deemed to have foregone their rights, which are now being claimed by them by their act and conduct for which they have to blame only themselves and none esle.

34. In view of what has been said above, there is absolutely no merit in this appeal and the same is ordered to be dismissed. There shall, however, no order as to costs.