
(2009) 05 RAJ CK 0003
In the Rajasthan High Court

Mahendra Rai Baxi through L.R. son Vyomesh Chandra Baxi APPELLANT
Vs
Smt. Laxmi Devi and Another RESPONDENT

Date of Decision : 01-05-2009

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (2009) 4 RLW 3588

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Judgement

Vineet Kothari, J.—This second appeal has been filed by the defendant tenant against the concurrent eviction decree passed by the two courts below under the provisions of Rajasthan Premises (Control of Rent & Eviction) Act, 1950. The present appellants are legal heirs of original tenant -Mahendra Rai Baxi namely; Vyomesh Chandra Baxi, his son and Smt. Dropadi Devi, his wife. The plaintiff landlord is Smt. Laxmi Devi Pungaliya. Inter alia the ground of eviction was also subletting of suit premises, a shop situated at Jalori Gate, Jodhpur to respondent No. 2 - Shri Prakash son of Shri Ishwar, partner of M/s. Apex Dry Cleaners.

2. At the time of admission of present second appeal, the following three substantial questions were framed by this Court:

1. Whether Sub-clause (b) of Clause (b) of Clause (vii) of Section 3 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 applies to a case where a suit was brought against the original tenant without terminating his tenancy u/s 106 of the Transfer of Property Act and such a tenant dies during the pendency of the suit?

2. Whether in the light of decision of Supreme Court in Kumar Jagdish Chandra Sinha and others Vs. Mrs. Eileen K. Patricia D'Rozarie, all the heirs of deceased tenant Mahendra Rai would inherit the tenancy in the present case irrespective of whether they were carrying on business in the premises with him till his death or not?

3. Whether in the light of decision of Supreme Court in V. Dhanapal Chettiar Vs. Yesodai Ammal, it can be claimed that the contract of tenancy came to an end with filing of the suit?

3. Later on, upon the death of one of the legal heirs of original tenant -Smt. Dropadi, vide order dated 18/2/1999 the appeal itself was dismissed as abated while rejecting the application under Order 22 Rule 3 CPC, however, that order was partially modified on 28/4/1999 and the appeal was allowed to be contested by legal heir already on record namely; Vyomesh Chandra Baxi, son of original tenant, and qua Smt. Dropadi the appeal was dismissed.

4. It is also pertinent to mention here that original tenant Mahendra Rai Baxi expired during the pendency of the suit on 12/5/1991, while the present suit for eviction was filed by the plaintiff on 19/3/1987.

5. It has also been found as a matter of fact by the courts below that said son of original tenant Shri Vyomesh Chandra Baxi never carried on the business in the suit shop with his father during his life time upto the death of his father on 12/5/1991 as he was serving in the Central Bank of India.

6. Mr. M.C. Bhoot, learned Counsel for the appellant-defendant tenant submitted that:

(i) the present appellant was entitled to protection u/s 106 of the Transfer of Property Act and even though he did not carry on the business with his father in the suit shop upto his death, since he inherited the right of tenancy from his father being his son, he was entitled to protection under the provisions of Transfer of Property Act and, therefore, the question No. 1 framed above deserves to be answered in favour of the appellant. He relied upon the decision of Hon'ble Supreme Court in the case of Kumar Jagdish Chandra Sinha and others Vs. Mrs. Eileen K. Patricia D'Rozarie,

(ii) He further submitted that the courts below have erred in relying upon the decision of Supreme Court in the case of Tara Chand and Another Vs. Ram Prasad, and since Clause (b) of Section 3 (VII) of the Rent Control Act, 1950, which defines the term "tenant" excludes contractual landlord, therefore, irrespective of the present appellant defendant, the son of original tenant not carrying on the business with his father upto his death, his right of inheritance of right of tenancy is not affected and he remains statutory tenant and, therefore, without terminating his tenancy the present appellant tenant cannot be evicted from the suit premises.

(iii) He further submitted that mere filing of suit against the original tenant by the plaintiff-respondent does not terminate the tenancy and admittedly since no notice terminating the tenancy in terms of Section 106 of the Transfer of Property Act was served on the original tenant or the present appellant defendant, his son, therefore, plaintiff respondent could not evict the present appellant defendant from the suit premises.

7. On the side opposite, Mr. R.K. Thanvi, learned Counsel for the plaintiff respondent vehemently submitted that there is no force in the present second appeal filed by the present appellant defendant as he does not fall within the definition of "tenant" as defined u/s 3(vii)(b) of the Act as he was not admittedly ordinarily carrying on the business with the original tenant upto his death and, therefore, the present appellant defendant was liable to be evicted on the basis of decree passed by the courts below from the suit premises. He submitted that in view of constitutional bench decision of Hon''ble Supreme Court in case of V. Dhanapal Chettiar Vs. Yesodai Ammal, it was clear that the termination of tenancy for the purpose of seeking eviction under the provisions of Rajasthan Rent Control Act, 1950 was immaterial and if the grounds of eviction were established by the plaintiff respondent-landlord, which in the present case was found as a matter of fact that original tenant has sublet the suit premises to the respondent No. 2 M/s. Apex Dry Cleaners and also on the ground of personal bonafide need of the landlord and default in payment of rent, therefore, the present appellant defendant, son of the original tenant, was not entitled to any separate or distinct rights as were available to the original tenant. He also relied upon the decisions of Hon''ble Supreme Court in the case of Gian Devi Anand Vs. Jeevan Kumar and Others, and Tara Chand and Another Vs. Ram Prasad, and number of other decisions, the list of which is given below for ready reference:

- (i) Chimanlal and Anr. v. Narendra Kumar 1995 DNJ 563 : RLW 1995(2) Raj. 415
- (ii) Navneet Rai v. Otmal 1996 (1) RCJ 29 : RLW 1994(2) Raj. 32
- (iii) Smt. Usha v. Sukhsampat Raj 1996 (1) RCJ 149 : RLW 1995(2) Raj. 14
- (iv) Gopi Kishan Vs. Bajrang Lal and Another,
- (v) Smt. Bhajani Devi and Anr. v. Ramratan 1988 DNJ 357
- (vi) Kesar Devi v. Shivratn and Ors. RLW 1999 (2) (Raj.) 111
- (vii) H.C. Pandey Vs. G.C. Paul,
- (viii) Bharat Singh v. Bharat Kumar 2000 (3) RLR 397
- (ix) Hardev Vs. Jaidev, 2000(1) Raj. 407
- (x) Ankur Sharma v. Smt. Darshan and Ors. 2001 (2) WLC 372
- (xi) Gantusha H. Baddi v. Meerabai AIR 2000 SC 1724
- (xii) LR''s of J.R. Ansari Vs. Hariram, 2003(3) Raj. 1951
- (xiii) Mohd. Kasam and Others Vs. Ghasi Lal,
- (xiv) Dwarkadass Vs. Narayan Dass,
- (xv) Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF),

8. In order to answer the questions framed by this Court, quoted above, it is first

considered worthwhile to reproduce the definition of "tenant" as defined in Section 3(vii) of the Rajasthan Rent Control Act, which reads as under:

(vii) "tenant" means:

(a) 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 land, including the person who is continuing in its possession after the terminating of his tenancy otherwise than by a decree for eviction passed under the provisions of this Act; and

(b) in the event of death of the person as is referred to in Sub-clause (a), his surviving spouse, son, daughter and other heir in accordance with the personal law applicable to him who had been, in the case of premises leased out for residential purpose, ordinarily residing and in the case of premises leased out for commercial or business purposes, ordinarily carrying on business with him in such premises as member of his family upto his death.

9. Let us now refer to the decision of Hon"ble Supreme Court in the case of Tara Chand and Another Vs. Ram Prasad, which was relied upon by the courts below. The Head note from the reports in SCC is reproduced hereunder for ready reference:

A shop was leased by respondent-landlord to one "A" for 11 months. After expiry of the lease period the respondent terminated the lease by a notice u/s 106 of Transfer of Property Act. But remained in possession of the shop and continued pay the rent till her death. The demised premises \ governed by the Rajasthan Premises (control of Rent and Eviction) Act. The respondent initiated an action for ejection against appellants 1 and 2 who were husband and son respectively of deceased A" on the ground that after death of "A" the appellants had no right to continue in the demised premises. According to the respondent, preceding the Amendment Act viz. Rajasthan Act 14 of 1976, the commercial of business tenancy was not heritable and for the first time the right to succession had been created under the Amendment Act and since as per the findings recorded by the courts, during the lifetime and till the death of the tenant A" the appellants did not carry on business with her as family business in the demised shop, on determination of the tenancy the appellants became trespassers thereby becoming disentitled to remain in possession of the shop premises. Allowing the appeal the Supreme Court.

Held:

Every tenancy is founded, initially, upon a contract. The contractual tenant has an estate or property in the leasehold interest of the tenancy and his heritability is an incidence of the tenancy. The tenant who continues to remain in possession even after the termination of the contractual tenancy till a decree for eviction against him is passed, continues to have an estate or interest in the tenanted premises. In absence of any provision in the Rent Act regulating the rights of its,

heirs to inherit the tenancy rights of the commercial premises after tenant's death, the tenancy rights devolves on the heirs under the ordinary law on succession. Under Hindu Succession Act the heirs of the deceased tenant are entitled to succeed, not only to his business, but also to his tenancy rights under the Rent Act which protects the heirs from ejectment except in accordance with that Act. Therefore, despite the termination of the tenancy, the tenancy rights are heritable and the heirs of the tenant are entitled to enjoy the protection of the Act.

In the present case, even after the determination of the tenancy u/s 106 of the TP Act, "A continued to remain in possession of the shop and holding over till date of her death. Notwithstanding the termination of the contractual tenancy juristic relationship of the landlord and tenant between the respondent and "A under the Rent Act was not snapped off and she enjoyed the status as a statutory tenant of the premises even after the determination of the tenancy. The heritable property or interest in the leasehold rights in the tenancy continued to subsist in the tenant "A. On her death, the rights to succession to an estate of the deceased owner vested immediately on his/her than nearest heirs and cannot be held in abeyance except when a nearer heir is then in the womb. The vested right can not be divested except by a retrospective valid law. The appellants by virtue of intestate succession under Hindu Succession Act, being Class 1 heirs, succeeded to the heritable interest in the lease hold right of a demised premises held by. They, thereby, stepped into the shoes of the tenant. They continued to remain in possession as on the date of the suit as statutory tenants. Thereby, they are entitled to the protection of their continuance as a statutory tenant under the Rent Act.

Section 3(vii)(b) of the Rajasthan Rent Act, as introduced by Act 14 of 1976, provides that in respect of premises leased out for commercial or business purposes it must be established that the surviving spouse or son or daughter and the heir as the case may be ordinarily had been carrying on the business during the lifetime of the tenant as members of the family in the demised premises and continued to do the business till date of death of the tenant. Thus to avail of the statutory right u/s 3(vii)(b), there must continue to subsist the unity of action and continuity of membership of the family between the deceased tenant and the spouse etc. The break in either of the links snaps off the right denuding the continuity of the statutory tenancy.

However, in the present case the succession having been opened to the appellants and succeeded in September 1966 to the estate of the tenant without any hiatus and restriction on the heritable interest in the leasehold right held by tenant "A1, the Amendment Act being admittedly prospective in operation, does not apply to the facts of the case and does not apply to the facts of the case and does not have the effect of divesting their vested rights in the leasehold held by the tenant. They are entitled to enjoy the tenancy rights without any restrictions or hedge put by the Amendment Act. Thus the Amendment Act does not apply to

the facts of this case. But the appellants succeeded to the heritable interest in the leasehold right in the demised premises governed by the Act subject to the rights and limitations prescribed under the Act and also subject to the rights in favour of the respondent created u/s 13(1) (a) to (k) and other provisions of the Act.

10. In earlier decision of Hon''ble Supreme Court in the case of Gian Devi Anand Vs. Jeevan Kumar and Others, , a constitutional bench decision, which was followed by the Hon''ble Supreme Court in the case of Tara Chand v. Ram Prasad, it was laid down in para 36 of the said judgment as under:

Accordingly, we hold that if the Rent Act in question defines a tenant in substance to mean a tenant who continues to remain in possession even after the termination of the contractual tenancy till a decree for eviction against him is passed", the tenant even after the determination of the tenancy continues to have an estate or interest in the tenanted premises and the tenancy rights both in respect of residential premises and commercial premises are heritable. The heirs of the deceased tenant in the absence of any provision in the Rent Act to the contrary will step into the position of the deceased tenant and all the rights and obligations of the deceased tenant including the protection afforded to the deceased tenant under the Act will devolve on the heirs of the deceased tenant. As the protection afforded by the Rent Act to a tenant after determination of the tenancy and to his heirs on the death of such tenant is a creation of the Act for the benefit of the tenants, it is open to the Legislature which provides for such protection to make appropriate provisions in the Act with regard to the nature and extent of the benefit and protection to be enjoyed and the manner in which the same is to be enjoyed. If the Legislature makes any provision in the Act limiting or restricting the benefit and the nature of the protection to be enjoyed in a specified manner by any particular class of heirs of the deceased tenant on any condition laid down being fulfilled, the benefit of the protection has necessarily to be enjoyed on the fulfillment of the condition in the manner and to the extent stipulated in the Act. The Legislature which by the Rent Act seeks to confer the benefit on the tenants and to afford protection against eviction, is perfectly competent to make appropriate provision regulating the nature of protection and the manner and extent of enjoyment of such tenancy rights after the termination of contractual tenancy of the tenant including the rights and the nature of protection of the heirs on the death of the tenant. Such appropriate provision may be made by the Legislature both with regard to the residential tenancy and commercial tenancy. It is, however, entirely for the Legislature to decide whether the Legislature will make such provision or not. In the absence of any provision regulating the right of inheritance, and the manner and extent thereof and in the absence of any condition being stipulated with regard to the devolution of tenancy rights on the heirs on the death of the tenant, the devolution of tenancy rights must necessarily be in accordance with the ordinary law of succession.

11. The Constitution Bench of the Supreme Court in *V. Dhanapal Chettiar Vs. Yesodai Ammal*, the seven judges bench, held that it was not necessary to give notice u/s 106 of Transfer of Property Act in order to get a decree or order of eviction against the tenant under any State Rent Control Act. The termination of lease in accordance with the said Act is unnecessary and a mere surplusage, because the landlord cannot get eviction of tenant even after such termination, in order to secure eviction under the provisions of State Rent Control Act the landlord must satisfy the ground of eviction as enumerated in said State Rent Control Act. The following relevant paras of the said judgment would be appropriate to be reproduced:

In order to get a decree or order for eviction against a tenant under any State Rent Control Act it is not necessary to give a notice u/s 106 of the Transfer of Property Act. Determination of a lease in accordance with the Transfer of Property Act is unnecessary and a mere surplusage because the landlord cannot get eviction of the tenant even after such determination. The tenant continues to be so even thereafter. That being so, making out a case under the Rent Act for eviction of the tenant by itself is sufficient and it is not obligatory to found the proceeding on the basis of the determination of the lease by issue of notice in accordance with Section 106 of the T.P. Act. On the question of requirement such a notice u/s 106 T.P. Act the difference the language of various State Rent Acts does not bring about any distinction. It is not correct to say that Section 106 of the T.P. Act merely providing for termination of a lease either by the lessor or the lessee by giving the requisite notice is an extra protection against eviction. The purpose of this provision is merely to terminate the contract which the overriding Rent Acts do not permit to be terminated. Even if the lease is determined by forfeiture under the Transfer of Property Act the tenant continues to be a tenant, that is to say, there is no forfeiture in the eye of law. The tenant becomes liable to be evicted and forfeiture comes into play only if he has incurred the liability to be evicted under the State Rent Act. not otherwise.

12. Now let us refer to the judgment relied upon by the learned Counsel for the appellant defendant in the case of *Kumar Jagdish Chandra Sinha and others Vs. Mrs. Eileen K. Patricia D'Rozarie*, In the said judgment provisions of Section 2(h) of the West Bengal Premises Tenancy Act, 1956 were being considered. The said provisions prior to its amendment in 1965 in West Bengal Act read as under:

"Tenant" means any person by whom or on whose account or behalf, the rent of any premises is, or but for a special contract would be. payable and also any person continuing in possession after the termination of the tenancy but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction.

After its amendment in 1965, Section 2(h) of the Act read as under:

"Tenant" means any person by whom or on whose account or behalf, the rent of any premises is. or but for a special contract would be. payable and includes any

person continuing in possession after the termination of his tenancy or in the event of such person's death, such of his heirs as were ordinarily residing with him at the time of his death, but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction.

In the context of said amendment, relying upon the earlier judgment in *Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others*, which was however later on been overruled by the Hon'ble Supreme Court in the case of *Smt. Gian Devi (supra)* and noting this fact, the Court held in para No. 13 as under:

13. It is undoubtedly true that the Statement of Objects and Reasons accompanying a legislative Bill cannot be used to ascertain the true meaning and effect of the substantive provisions of the legislation, but it can certainly be pressed into service for the limited purpose of understanding the background, the antecedent state of affairs and the object of the legislation sought to achieve. If the substitution of the words "include any person continuing in possession after the termination of his tenancy or in the event of such person's death, such of his heirs as were ordinarily residing with him at the time of his death" in the amended definition of "tenant" in Section 2(h) of the Act is read in the context of the aforesaid Statement of Objects and Reasons and the proximity between the date of delivery of judgment in *Anand Nivas (P) Ltd.*'s case and the issuance of the Ordinance, there cannot be any manner of doubt that the amendment was brought in to give protection not only to the statutory tenant but also to such of his heirs as were ordinarily residing with him in the demised premises at the time of his death. That necessarily means that the words "in the event of such person's death" in Section 2(h) refer only to the death of the person who was continuing in possessing after the termination of his tenancy and not also to the person referred to in its earlier clause, namely, the contractual tenant.

Thus, the Hon'ble Supreme Court in aforesaid cases merely extended the protection of State Rent Control Act to the heirs of statutory tenant, who died, prior to filing of the suit for eviction.

13. The aforesaid judgment relied upon by the learned Counsel for the appellant defendant, in the opinion of this Court, does not militate against the above referred judgments relied upon by the learned Counsel for the plaintiff respondents and does not lay down that such legal heirs of statutory tenant after his death would not be covered by the provisions of State Rent Control Act and besides protection available under the State Rent Control Act would not be bound by obligations and grounds of eviction established under the State Rent Control Act. Therefore, irrespective of the heirs of the Statutory tenant stepping into the shoes of statutory tenant upon his death, it is only proper to hold that such legal heirs would also be bound by all the rights and obligations of the State Rent Control Act as the original tenant was, as laid down by the Hon'ble Supreme Court in *Tara Chand v. Ram Prasad* and *Smt. Gian Devi Anand v. Jeevan Kumar and Ors. (supra)*.

14. This Court finds no force in the submissions made by Mr. M.C. Bhoot, learned Counsel for the appellant defendant that Clause (b) of Sub-section (vii) of Section 3, while referring to the words, "in the event of death of the person as is referred to in Sub-clause (a)" only refers to the types of tenants other than contractual tenant. In the opinion of this Court, the said words refer to both tenants as referred to in Clause (a) of Section 3 (vii) of the Act defining the term "tenant namely; (i) Contractual Tenant and (ii) Statutory Tenant. Thus, right of inheritance of tenancy even by the legal heir of a statutory tenant is limited and circumscribed by words, "ordinarily carrying on the business with him in such premises as member of his family upto this death". Thus, if such legal heir of the statutory tenant is not carrying on the business upto his death, he would not fall within the definition of tenant at all and thus would not be entitled to any protection under the Rent Control Act. There is further no force in the submission of learned Counsel for the appellant defendant that such legal heir of statutory tenant even if not entitled to the protection under the Rent Control Act, would be entitled to protection under the provisions of Transfer of Property Act and thus entitled to a fresh terminating his tenancy u/s 106 of the Transfer of Property Act. Since, eviction is governed by the special law namely Rajasthan Premises (Control of Rent and Eviction) Act, 1950, there is no question of going beyond the scope of the Act and extending the protection under the general law to such legal heir of the statutory tenant after the death of the statutory tenant. Proceedings even at the appellate stage continue to be governed by the special law namely; Rent Control Act and, therefore, this contention of the learned Counsel for the appellant defendant deserves to be rejected and is accordingly rejected.

15. In the present case, it is also worth noting that death of statutory tenant or the original tenant Mahendra Rai Baxi took place after filing of the suit, whereas, in the case involved before the Hon'ble Supreme Court in Jagdish Chandra Sinha (supra) the death of statutory tenant took place prior to the filing of the suit. Since filing of eviction suit itself amounts to termination of tenancy and as per the law laid down by the Constitution Bench in V. Dhanpal Chettier v. Yashodai Ammal (supra) no notice terminating the tenancy u/s 106 of the Transfer of Property Act prior to filing of the eviction suit is necessary, such an extended protection for the legal heir of the statutory tenant as canvassed by the learned Counsel for the appellant defendant is neither envisaged in law nor can be otherwise given to him and such legal heir having admittedly not carried on the business with the original tenant or so called statutory tenant upto his death, is not entitled to any additional or extra privilege or protection other than the one enjoyed by the original tenant himself and the eviction decree passed against the original tenant would equally bind the said legal heir and sublettee.

16. This Court in *Chimanlal and Anr. v. Narendra Kumar* 1995 DNJ (Raj.) 563 held as under:

16. The term "Ordinarily carrying on business with him in such premises as

member of his family upto his death" makes it clear that protection of Section 3(vii)(b) of Act No. 17 of 1950 is extended to only those heirs and legal representatives of deceased-tenant who continued to do business along with the tenant upto his death. The person who carried on business with the tenant till his death only be treated as tenant under the Amended Act No. 14 of 1950. If the heirs and legal representatives of deceased-tenant Mangi Lal were not carrying on business along with the deceased-tenant at the time of his death, they would not be treated as tenants under the aforesaid Act. All heirs and legal representatives of deceased-tenant will not become ipso facto statutory tenant under the Act. In fact, only those heirs and legal representatives who are members of the family plus who carried on business with the original tenant upto his death are entitled to get benefit of Section 3 (vii) (b) of the Act. Subsequently, carrying on business after death of original tenant in the premises will not make such heir and legal representatives as tenant under the Act.

17. Again in *Navneet Rai v. Otmal* (1996) 1 All India RCJ, this Court held that:

9. Admittedly, the ejectment was sought for on the ground of personal need of business and deceased Navneet Rai was carrying on business in the suit premises. Thus, to be a tenant within the meaning of Section 3 (vii) (b) of the Act, it is necessary for a person to show that he was ordinarily carrying on with him in such premises as member of his family upto his death. Subsequently carrying on the business in the same premises will not make the legal representative a tenant. Tenant will be person, who is a member of the family plus who carried on business with the original tenant. The person, who was not carrying on business along with the tenant during his life time will not be a tenant of the premises after his death, in respect of the premises leased out for commercial and business purposes. It must be established that the surviving spouse or the son or daughter and the heir, as the case may be. ordinarily had been carrying on the business during the life time of the tenant as member of the family in the demised premises and continued to do business till the date of the death of the tenant. In other words, to avail the statutory right u/s 3(vii)(b) of the Act, the person should carry on business along with the tenant until his death then alone he can be treated as a tenant of the suit premises. Reliance is placed on *Tara Chand v. Ram Prasad*.

10. ...It is clear that all the legal representatives were employed and were not carrying on business along with the deceased Navneet Rai till his death. The person who carries on business with the tenant till his death shall only be treated as a tenant under the Act. But the legal representative were not carrying on business along with deceased Navneet Rai at the time of his death. They are not the tenants, within the meaning of the Act and thus, have no right to challenge the decree for ejectment passed against the tenant deceased Navneet Rai.

18. Recently in *Dwarkadass v. Narayandass* (2006) CJ (Rent Control) 554 this Court reiterated this position as under:

11. So far the contention raised on the basis of Ramjeevani's case is concerned, from a bare perusal thereof it is clear that Ramjeevam's case does not take in account, rather even does not refer to the judgment of Hon'ble Supreme Court in Tara Chand's case. Obviously it could not be referred as the judgment in Ramjeevani's case was rendered on 22.12.1989, while the judgment of Hon'ble the Supreme Court in Tara Chand's case is dated 3.5.1990. Since in Tara Chand's case the view taken is, as quoted in the judgment in Usha's case and Chiman Lal's case, therefore, obviously in view of the subsequent judgment of Hon'ble the Supreme Court, the judgment in Ramjeevani's case cannot be said to be holding the field at all.

12. The obvious result is, that in order to entitle to protection of the Act, each of the heir, or legal representatives, claiming protection, has to satisfy the other requirement also, about living with the deceased tenant, or carrying on business with him, in case residential, and commercial premises, respective Therefore, the first submission made by the learn counsel is negated.

19. In Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF), in para 13, the Apex Court held that:

In our view, the decision of this Court in M/s. Ambalal Sarabhai Enterprises Ltd. Vs. M/s. Amrit Lal and Co. and Another, does not support the appellant but it supports the respondent. In that decision, this Court held that the vested right of the landlord under the general law continues so long it is not abridged by the protective legislation, namely, the Rent Act, but the moment this protection is withdrawn, the vested right of the landlord reappears which can be enforced by him. Such being the position, we are, therefore, of the view that since the eviction petition filed by the respondent before the Additional Rent Controller was withdrawn and the tenancy was terminated by a fresh notice to quit and in view of the increase of rent wished by the landlord in compliance with Section 6A read with Section 8 of the Act, there cannot be any difficulty to hold that the suit in fact was maintainable under the general law. That being the position, the decision of this Court in Ambalal Sarabhai's case [supra] can not at all be applicable in favour of the appellant and which, in view of our discussions made hereinabove, can only be applicable in favour of the respondent.

20. In view of aforesaid legal position and factual matrix, this Court has no hesitation in holding that the eviction decree passed by the courts below against the appellant defendant deserves to be maintained and there is no force in the appeal filed by the legal heir of the original tenant Mahendra Rai Baxi and the substantial questions of law formulated above are answered in favour of the respondent plaintiff and against the defendant as follows:

(i) Question No. 1 is answered like this that provisions of Section 3(vii)(b) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 applies to a case where the suit was brought against the contractual tenant or statutory tenant both and there is no requirement in law for terminating his tenancy in

accordance with Section 106 of Transfer of Property Act before filing of the such suit and upon death of such tenant his legal heirs ordinarily carrying on business with him upto his death are entitled to same protection, rights and obligations which the original tenant was so entitled, or was subject to

(ii) Question No. 2 is answered like this that heir of deceased tenant Mahendra Rai Baxi would inherit the tenancy upon his death subject to conditions stipulated in Section 3 (vii)(b) of the Act and such tenancy would inherit in legal heir of the deceased statutory tenant only if he was carrying on the business with him upto his death.

(iii) Question No. 3 is answered in the manner that the contract of tenancy comes to an end with the filing of suit for eviction against the tenant in accordance with law laid down by Hon"ble Supreme Court in V. Dhanapal Chettiar Vs. Yesodai Ammal,

21. Accordingly, the present second appeal is dismissed with cost of Rs. 2000/- and the appellant defendant as well as the respondent No. 2-sub-lettee are directed to handover the vacant and peaceful possession of the suit shop in question to the plaintiff respondent within two months from today. The appellant defendant shall further mesne profits @ Rs. 2000/- per month from May, 2009 onwards to the plaintiff respondent till actual handing over of the vacant and peaceful possession of the suit shop to the plaintiff respondent and he shall also pay arrears of mesne profits, if any, in accordance with the judgment and decree of courts below. If there is any default in payment of mesne profits as directed above or the appellant defendant or the sub-lettee fail to handover the vacant and peaceful possession of the suit shop to the plaintiff respondent within the aforesaid period of two months, the plaintiff respondent shall not only be entitled to execution of the decree in normal course but shall be entitled to invoke the contempt jurisdiction of this Court.