
(1976) 11 BOM CK 0013

In the Bombay High Court

Case No : Special Civil Application No. 5629 of 1976 (Converted from S.A. No. 860 of 1974)

Ramgopal Shrikisan Asawa

APPELLANT

Vs

Satyanarayan Ramniwas Phofalia and Another

RESPONDENT

Date of Decision : 18-11-1976

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1), 17, 17(1), 5(2)
Civil Procedure Code, 1908 (CPC) — Section 47
Constitution of India, 1950 — Article 227
Transfer of Property Act, 1882 — Section 6

Citation : AIR 1978 Bom 14 : (1977) MhLj 474

Hon'ble Judges : Jahagirdar, J;Apte, J

Bench : Division Bench

Advocate : R.V. Jahagirdar, for the Appellant; A.C. Agarwal, for the Respondent

Judgement

Jahagirdar, J.—On City Survey No. 2880/6, in the city of Sholapur, there was a godown, bearing Municipal No, 748/5, belonging to one Rajkumar Laxmi narayan Rathi. Two-third of this godown was rented to Ramgopal Shrikisan Asawa, the petitioner in the present petition, on a monthly rent of Rs. 69-64. In 1968 the said Rajkumar issued a notice terminating the tenancy of the petitioner with effect from 31st March 1968 and followed this up by filing a suit on 4th May 1968 in the Court of the Civil Judge, Junior Division, for possession of the leased premises on various grounds. This suit, being Regular Civil Suit No. 444 of 1968, was filed by the said Rajkumar, as already mentioned, for possession on the ground that the petitioner was in arrears of rent for more than six months, that the petitioner had sublet a portion of the suit premises for parking of a car, that the petitioner had made a permanent construction without the consent of the landlord and lastly that the landlord required the suit premises bona fide and reasonably for his occupation inasmuch as it was necessary for stocking goods in his expanding cloth business.

2. The suit was dismissed by the trial Court and in the appeal preferred by the landlord, on 30-6-1970 consent terms were arrived at between the parties and accordingly a decree was passed.

3. Thereafter, on 27th April 1971, the said Rajkumar, who was the original decree-holder, sold the entire building in which the suit premises were situated along with the decree obtained by him in the proceedings mentioned hereinbefore to the respondents in this petition. The consideration for this assignment is mentioned as Rs. 16,900/- in the sale-deed. Thereafter, on 1st Sept. 1971, the respondents filed an execution application, being Regular Darkhast No. 338 of 1971, for possession of the premises which the petitioner had agreed to deliver to the landlord in terms of the consent decree passed on 30th June 1970.

4. The petitioner resisted the Darkhast by contending that the decree passed u/s 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, hereinafter referred to as "the Rent Act", could not be executed by a person who has not originally obtained the decree in the suit. He contended that the right to take possession under the decree is restricted to the person who has obtained the decree, the same being personal to the plaintiff in the suit for possession.

5. The learned Joint Civil Judge, Junior Division, Sholapur rejected the contention of petitioner and directed the Darkhast to be proceeded with, by his judgment and order dated 17th July 1973. Thereafter the petitioner preferred an appeal, being Civil Appeal No. 213 of 1973, which was heard and dismissed by the IInd Extra Assistant Judge, Sholapur, by his judgment and decree dated 18th April 1974. While dismissing the appeal of the petitioner, the learned II Extra Assistant Judge held that it was not apparent on the face of the decree that the decree was passed u/s 13(1)(g) of the Rent Act and secondly that the decree could be executed even by a transferee notwithstanding the provisions in Section 17 of the Rent Act.

6. Being aggrieved by the aforesaid decree passed by the II Extra Assistant Judge of Sholapur, the petitioner first preferred Second Appeal No. 860 of 1974 which was admitted. At the time of the final hearing of the second appeal Mr-Agarwal, the learned Advocate appearing for the respondents, took an objection to the maintainability of the appeal on the ground that in execution proceedings relating to a decree passed under the Bombay Rent Act, a second appeal does not lie to the High Court, inasmuch as, a second appeal does not lie against the decree itself passed in the suit. This preliminary objection was upheld by us and Mr. Jahagirdar, appearing for the petitioner, accepted this position and made an oral application for converting the second appeal into a writ petition under Article. 227 of the Constitution. By an order passed on 17th Nov. 1976 we granted this prayer and Mr. Jahagirdar undertook to file a memo of petition within the time allowed by us incorporating the grounds in the petition which were already raised in the second appeal. On this term and subject to this

undertaking, this matter has been heard as a Special Civil Application under Art. 227 of the Constitution.

7. Mr. Agarwal, who appears for the Respondents, waived the notice and agreed that we should proceed to hear the petition on merits as if it is a special civil application fixed for final hearing subject, however, to his objection that there is an inordinate delay in the conversion of the second appeal into special civil application and, therefore, on that ground it should be dismissed. This objection is baseless inasmuch as the second appeal was filed in time and when we were to convert it into a petition under Article. 227 of the Constitution, the date of filing must be the date on which the original appeal itself was filed. Mr. Agarwal further contended that the main judgment does not disclose any error of law apparent on its face and, therefore, the petition must be dismissed. This objection will be dealt with when we consider the case itself.

8. Mr. Jahagirdar, who appears for the petitioner, assailed the judgments of the two Courts below and contended that the reasoning of the Courts below in support of the execution of the decree by the assignees of the decree is defective and their interpretation of the provisions of the Rent Act and in particular Section 13(1)(g) and Section 17 discloses an error of law which is patent on the face of the record. It was Mr. Jahagirdar's contention that the decree u/s 13(1) (g) of the Rent Act is obtained on the ground that the landlord reasonably and bona fide requires the suit premises for occupation by himself and if, therefore, after the decree is passed it is transferred or assigned to some one else, the very basis on which the decree was passed disappears and, therefore, that decree cannot be executed by the assignees or the transferees. A necessary corollary of this argument was that the right to take possession in pursuance of a decree passed u/s 13(1)(g), is personal to the plaintiff in the suit in which a decree was passed and restricted to the person who has obtained that decree. If such a person, as a result of certain developments after the passing of the decree, is unable to take possession in pursuance of the decree, no one else can be nominated by him to execute the decree and to take possession. Mr. Jahagirdar further contended that the interest to enjoy the property under the decree passed u/s 13(1)(g) is restricted in its enjoyment to the owner of the decree and by virtue of the provisions contained in Section 6(d) of the T. P. Act the same cannot be transferred. To put it in another way, the learned counsel for the petitioner said that though the decree is transferable, the right to take possession and enjoy the property which is an integral part of the decree is an interest which remains with the transferor. Though the transferor has transferred all other interest in the decree, the interest to enjoy the property by executing the decree obtained u/s 13(1)(g) should be carved out and should be left with the transferor who has otherwise sold all the rights, title and interest under the decree.

9. When Mr. Jahagirdar opened his case by pointing - out that the decree under execution is a decree u/s 13(1)(g) of the Rent Act, Mr. Agarwal, appearing for the

Respondents, pointed out that the decree on the face of it does not show that it is a decree u/s 13(1)(g) and, therefore, all the arguments which may be built up by Mr. Jahagirdar on the ground that it is a decree u/s 13(1)(g) will be without any foundation. It is undoubtedly true, as Mr. Agarwal contends and as Mr. Jahagirdar without difficulty concedes, that the decree as it stands does not disclose that it was passed u/s 13(1)(g) of the Bombay Rent Act; in fact it does not disclose at all that it was passed under the Rent Act itself. Mr. Jahagirdar contended that in the execution proceedings he is entitled to take objection on the ground that the decree is inexecutable because it is u/s 13(1)(g) and on the grounds which we have already summarised above and which will be examined later on. If he is entitled to resist the decree on the ground that it is inexecutable, he is also further entitled to show what the nature of the decree is and in what circumstances it was passed.

10. It is now well-settled that a special Court constituted under the Bombay Rent Act, as under other Rent Acts, cannot pass a decree except on one or the other ground mentioned in the Rent Act. As the decree under execution does not disclose on what ground it was passed and whether it was passed under the Rent Act at all it was necessary to find out the ground on which it was passed. If a Court passes a decree on a ground de hors the Act, then that decree would be a nullity. Mr. Jahagirdar, however, concedes that he is not attacking this decree on the ground that it is a nullity but he says that he is entitled to show that the decree under execution is a consent decree and that it does not bear the imprint of the reasoning of the Court passing that decree that it is a decree passed validly on one ground or the other mentioned in the Rent Act itself and he cannot argue on the inexact-ability of the decree unless he is allowed to refer to the material on record because of the absence of recitals in the consent decree. For this purpose he relied upon a judgment of the Supreme Court in K.K. Chari Vs. R.M. Seshadri, : While dealing with the question that the Court under the Rent Act must pass a decree of eviction on one or the other ground mentioned in the Act and if at same stage the consent decree does not disclose whether it was passed after the satisfaction of the Court of the existence of one or the other ground necessary for passing a decree, it was held, it would be legitimate to refer to the other material on record to be satisfied that there was material before the Court which passed the decree.

11. The Supreme Court in the above-said decision said (at p. 1319 of AIR):

".....It is no doubt true that the order on the face of it does not show that the Court has expressed its satisfaction that the requirement of the landlord is bona fide. If the Court had expressed its satisfaction in the order itself, that will conclude the matter. That the Court was so satisfied can also be considered from the point of view whether a stage had been reached in the proceedings for the Court to apply its mind to the relevant question. Other materials on record can also be taken into account to find out if the Court was so satisfied.....".

If the material on record other than the decree itself could be referred to for

finding out whether the decree has been validly passed, Mr. Jahagirdar contends that the same material can be referred to for the purpose of finding out on what ground the decree has been passed, as he says a decree passed by the Special Courts under the Rent Act cannot be valid unless it is passed on one or the other ground mentioned in the statute. If the decree itself does not show on what ground it was passed, it will be legitimate to find out from the other records as to the ground on which it was being passed.

12. The duty of the executing Court has been explained by the Supreme Court in *Bhavan Vaja and Others Vs. Solanki Hanuji Khodaji Mansang and Another*, " in the following terms (at p. 1374) :

"It is true that an executing Court cannot go behind the decree under execution. But that does not mean that it has no duty to find out the true effect of that decree. For construing a decree it can and in appropriate cases, it ought to take into consideration the pleadings as well as the proceedings leading upto the decree. In order to find out the meaning of the words employed in a decree the Court often has to ascertain the circumstances under which those words came to be used. That is the plain duty of the executing Court and if that Court fails to discharge that duty it has plainly failed to exercise the jurisdiction vested in it. Evidently the executing Court in this case thought that its jurisdiction began and ended with merely looking at the decree as it was finally drafted....."

13. We uphold this contention of Mr. Jahagirdar and allow him to refer to other material, if any, on the record for the purpose of finding out that the decision passed is u/s 13(1)(g) and not under any other section. Mr. Jahagirdar referred us to what has been described as a judgment by the learned District Judge of Sholapur before whom the consent terms were arrived at and who passed the decree under those consent terms. The learned District Judge briefly reviewed the evidence which had been recorded before the trial Court which had dismissed the suit and expressed his opinion that the plaintiff had no case for possession of the suit premises on the grounds that the petitioner had erected a permanent structure or that the petitioner had committed default in respect of rent for more than 6 months or that the petitioner had sublet any part of the suit premises. He was, however, of the view that the landlord was entitled to possession and must be granted possession on the ground that he bona fide and reasonably required it for using as a godown. Mr. Jahagirdar rightly points out that the learned District Judge was satisfied of the existence of the evidence regarding the bona fide and reasonable requirement and of the total absence of the other three grounds on which the landlord had brought the suit. After the learned District Judge applied his mind as detailed above and gave his views, he stated that the parties entered into the settlement the terms of which are as follows :--

"ORDER

The appeal is allowed.

A decree in terms as stated below.

Both the parties have now settled the matter and deft, accepts and agrees that he would deliver the possession of half portion of the godown in his possession so that the plaintiff may set up a wall and utilise half of the portion in possession of the defts. that is to say approximately 1/3rd of it is in possession of the tenant and out of the remaining portion in possession of the deft. half portion of the godown would be surrendered by the defendants in favour of the plaintiff as soon as he constructs the wall and separates the portion for his own use.

It is further accepted that the rent for such portion as will be continued with the deft, would be Rs. 35- per month and the month of tenancy would run according to the Gregorian calendar from first of each month to the last day of each month. The landlord will have choice to select the portion to be taken by him and the deft, will have half portion that will be left out by the landlord.

It is accepted by both the parties that they would devise ways and means of setting up of wall and taking the possession, in case they are unable to settle the matter, the Court executing the decree should decide the mode of division and get the partition wall constructed under the supervision of a Court Commissioner, and deliver half portion to the plaintiff in execution of the decree. In case the deft, in any manner non-co-operates, the Court executing the decree will be entitled to give appropriate direction for the costs or damages suffered by the plaintiff on account of non-co-operation of the deft, in the proceeding in the execution of this decree. The deft, will be liable to pay the rent at the rate of Rs. 69-64 for the period till which the partition will be set up. Order of the costs passed by the trial Court in the suit stands confirmed in respect of the suit; but the parties shall bear their costs in respect of the appeal as incurred.

Dated 30th June, 1970".

14. As the terms mentioned above stand, they do not disclose, as contended by Mr. Jahagirdar, the ground on which the decree for possession had been passed by the learned District Judge.

15. After having thus satisfied us that the decree in execution was a decree passed u/s 13(1)(e) of the Rent Act. Mr. Jahagirdar contended that the interest which is a part of the decree for occupying and enjoying the property after the decree is executed cannot be transferred in view of the provisions contained in Section 6(d) of the Transfer of Property Act. That provision is as follows :--

"An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him."

We are not inclined to accept this submission of Mr. Jahagirdar because in the first place an interest in the decree can-not be carved out separately as suggested by him. If the entire decree is transferred, it is not possible to retain part of the rights or interests contained in that decree. Secondly, we are also satisfied that the right to occupy and possess the property in pursuance of the decree is not an interest in the property restricted in its enjoyment to the owner

personally. The landlord can obtain possession of property in pursuance of; any decree passed u/s 13(1)(g) and the property can be enjoyed by any, person other than the landlord.

16. The next argument, which is more elaborate, advanced by Mr. Jahagirdar was that when analysing the scheme of the Act and in particular the provisions of Section 13(1)(g) and Section 17 of the Act, it is implicit that a decree passed u/s 13(1)(e) cannot be transferred especially to strangers and such a transfer, if made, will not enable the stranger to execute the decree. According to him, if the execution of such a decree by the transferee or assignee is allowed, it would defeat the provisions of Section 17 of the Rent Act and the entire decree will lead to contravention of the said provisions and if the Court comes to the conclusion that the execution of the decree leads to illegal results, the Court should not lend assistance to such execution.

17. Sub-section (1) of Section 17 of the Rent Act provides that where a decree for eviction has been passed by the Court on the ground specified in clause (g) of sub-section (1) of Section 13 and the premises are not occupied within a period of 1 month from the date on which the landlord recovers possession, the erstwhile tenant is entitled to make an application to the Court which can order the landlord to place the tenant in occupation of the premises from which he has been evicted. The tenant is thus entitled to reinstatement in case the landlord fails to occupy the premises within one month after he obtains the premises in execution of a decree passed u/s 13(1)(g). It is now settled by the Supreme Court that the requirement of occupation of the premises within one month after execution of a decree relates to a decree passed u/s 13(1)(g) as also the requirement of construction work to be commenced within a period of one month in case of a decree obtained u/s 13(1)(i) (vide *Krishanlal Ishwarlal Desai Vs. Bai Vijkor and Others*, According to Mr Jahagirdar, the landlord mentioned in Section 17(1) is the landlord who has obtained a decree; It is the same landlord who has authority to execute the decree- and obtain possession; It is again the same landlord who has to occupy the premises the possession of which he has thus obtained. If Section 13(1)(g) and Section 17 are read together, as indeed they ought to be read together, Mr. Jahagirdar says that the landlord who figures in the latter section must be the same landlord who had appeared in the earlier section. The decree for self-occupation cannot be obtained by one landlord and executed by another landlord. At first sight the argument advanced by Mr. Jahagirdar appears to be attractive as it apparently advances the object for which the Rent Act was enacted. If a landlord obtains a decree on the ground that he requires the suit" premises for occupation by himself or by members of his family and after obtaining the decree he transfers the same it will, according to Mr. Jahagirdar, give a handle to persons who have wherewithals to purchase the decree and to execute the same. If we were to rest our judgment only on the object of the Rent Act and the possible abuses to which any other interpretation would lead we would have upheld the contention of Mr Jahagirdar.

18. But for the purpose of interpreting the provisions of Section 17 as narrowly as is suggested by Mr. Jahagirdar it would require more explicit and compelling reasons than the ones mentioned by Mr. Jahagirdar. It must be noted that the decree is the culmination of a suit which has been filed on a cause of action. As soon as a decree is passed, the original cause of action is merged in it and has no separate existence. The decree is property which is capable of being transferred or assigned as any other form of property is capable of being assigned or transferred. If it is so, to hold that a particular decree is incapable of being transferred or assigned or at any rate incapable of being executed it will be necessary to look for much stronger restrictions than those suggested by the interpretation put by the learned counsel for the petitioner on Section 17. The property can be transferred under a law; the transferee of a property who is the owner of that property is entitled to handle it as an owner of any other property. If, therefore, it is being suggested that a particular type of property is subject to limitation and restrictions those limitations and restrictions must be found clearly or by necessary implication in some provision of law. We are unable to accept that the provisions of Section 17 of the Rent Act impose any such restriction by necessary implication; that they do not expressly impose such restriction is obvious.

19. Mr. Jahagirdar in support of his submission referred to a decision of Nag-pur High Court, viz., Dwarkanath Jagannath Gupta v. Amarnath Gopinath Gupta AIR 1957 Nag 100. That was a case under the Central Provinces and Berar Letting of Houses and Rent Control Order (1949). Clause 13 (3) of the said order contemplated a personal need of the landlord as a ground for grant of permission to terminate the tenancy. Petitioner No. 1 in these proceedings was the father of Petitioner No. 2 and was the landlord of a house which was in occupation of the Respondents Nos. 1 to 4 in that petition as tenants. Petitioner No. 1 made an application to the Controller for permission to terminate the tenancy but before this permission was granted, there was a partition in the family and the suit house was allotted to Petitioner No. 2.

The question then arose as to whether the Petitioner No. 1 could continue the proceedings for obtaining permission under clause 13 (3) of the aforesaid Order. It was held that since the property itself had been transferred to a person other than the one on whose behalf the permission was being sought "the proceedings could not be continued on behalf of Petitioner No. 1. In that case proceedings were continuing and had not culminated in the passing of a decree which is the case here. We do not, therefore, think that the said decision will assist Mr. Jahagirdar in any way.

20. Reliance was also placed by Mr. Jahagirdar on a decision of the Madras High Court in Dr. Mohammed Ibrahim v. Rahim Khan (1947) II MLJ 419. The Madras High Court held that an order of the Rent Controller directing the tenant to put the landlord in possession of his house on the ground that the landlord desired to occupy the house himself is one for the personal benefit of the landlord and is

not capable of execution after the death of the landlord at the instance of his legal representatives. Mr. Jahagirdar with considerable justification contends that if according to the said decision the legal representatives of the deceased landlord who had obtained the decree for possession on the ground of bona fide requirement for personal occupation could not execute the decree, the assignees could do so much less they being total strangers to the proceedings which culminated in the decree and also to the family of the landlord. The learned single Judge of the Madras High Court while delivering the said judgment held that like a decree for restitution of conjugal rights or like a decree in favour of a widow to reside in a house the decree obtained by a landlord for possession of the premises on the ground of requirement of personal occupation is a personal decree and with the death of the landlord-decree-holder the substratum of the decree is demolished with the result that the decree itself becomes inexecutable.

21. With great respect we are unable to agree with the observations in the said judgment which compare a decree for possession of the suit property on the ground of personal requirement of a landlord with a decree for restitution of conjugal rights or with a decree in favour of a widow to reside in a house. The provisions of the Bombay Rent Act do not at any place impose any limitations or fetters on the person who obtains a decree to transfer the same in favour of any other persons; there is no modification of the rule of general law, viz, that a decree can be transferred like any other property can be transferred. There is no reason for us to hold that a decree for possession of the suit premises for personal requirement of the landlord, like any other decree, cannot be transferred. In any case, the observations of the single Judge in the above-mentioned decision are contrary to the judgment of Chief Justice Chagla in *Kadarbhai Dossaji v. Sugrabai w/o Mohomadali Esufali* (Civil Revision Application No, 822 of 1951 decided on 15th July 1952 (Bom), unreported). The facts of the case decided by the Chief Justice Chagla were that plaintiffs Nos. 1 and 2 had filed a suit in the Small Cause Court at Bombay for possession of certain premises on the ground that they required the same for the use and occupation in order to carry on a business. They succeeded in obtaining a decree but before execution could be concluded, plaintiff No. 1 died and in execution proceedings the heirs of plaintiff No. 1, though not necessary, were brought on record. The executing Court held that execution proceedings were maintainable despite the death of plaintiff No. 1. This decision was challenged :n a revision petition in the High Court and it was contended on behalf of the petitioner-judgment-debtor that with the death of the original plaintiff No. 1 the basis of the decree had vanished and, therefore, the decree could not be executed. Rejecting this contention the learned Chief Justice pointed out -:

".....That to me is a very startling proposition of law. I can understand a plaintiff dying pending suit. In that case the question always arises whether the cause of action which was in him survived to his legal representatives. If the cause of action did not survive the suit must abate and must fail. But I have never heard this proposition being advanced in relation to a decree. Once a decree is passed

the cause of action is merged in the decree and in law the legal representative of the deceased decree-holder is entitled to execute the decree even though the decree might have been personal to the plaintiff. The legal representative does not execute the decree in his own right, but in the right of the estate which he represents. That to my mind is an elementary proposition and the Rent Act does not in any way alter that elementary proposition.....".

22. This proposition of law laid down by the learned Chief Justice must be held to be applicable to the assignees of the decrees also for there is nothing in the Rent Act to hold otherwise, viz., assignees of a decree cannot execute a decree.

23. At this stage we may refer to a decision of the Gujarat High Court in *Budhaji Bakerji v. Desai Shantilal* (1963) 4 Guj LR 721. The facts in that case disclose that the opponent had obtained a decree for possession of the suit premises on the ground mentioned in clause (i) of Section 13(1) and after the decree was passed assigned the decree to the respondents in the petition before the High Court. It was contended on behalf of the tenants that the decree passed under clause (i) of Sub-section (1) of Section 13 was a personal decree and that the decree could only be executed by the person who was the landlord at the time when the cause of action arose and that it could not be executed by anyone else. Mr. Justice Miabhoy, who heard the petition, rejected this contention and while doing so relied upon the judgment of the Chief Justice Chagla to which we have already referred above. Mr. Agarwal, who appears for the respondents, points out that there is no distinction, in so far as the executability is concerned, between the decree passed u/s 13(1)(i) and Section 13(1)(g) of the Rent Act. Mr. Agarwal says that the contention of Mr. Jahagirdar that the provisions of Section 17 by necessary implication exclude the possibility of a decree u/s 13(1)(g) being executed by a person other than the one who obtained the decree, cannot be accepted in view of the decision of the Gujarat High Court as well as the decision of the Chief Justice Chagla of our High Court.

24. For the reasons which we have already indicated above, we are of the opinion that a decree which is a property under the general law can be transferred unless there is a specific limitation or restriction placed upon it by any law. The Rent Act does not place any such limitation or restriction. We cannot infer such a restriction from the provisions of Section 17. A restriction on right which is recognised under the law of the land must be provided more explicitly.

25. It would not be out of place to mention here that prior to 1953 there was a provision under the Rent Act which prohibited a person who purchased a property after 1947 from filing a suit for the possession of the property on the ground mentioned in Section 13 (1) (g) of the Rent Act. In 1953 this restriction was removed. At no time neither then or since then a restriction on the transferability of a decree passed u/s 13(1)(g) has been included in the Rent Act. If there is no restriction on the transferability of the decree itself there is no reason for us to go further and say that the executability of the decree

transferred can be stopped.

26. We are able to find support to our view from the decision of the Queen's Bench of the High Court in *Goldthorne v. Bain* 1952 (2) All ER 23. This was a unanimous judgment of three Judges. In that case the landlord's mother had obtained an unconditional order for possession on 8th March 1951 and before the order could be executed she died on 30th August 1951. By her will she left the house to her daughter. On 15th December 1951 the executors under the will executed an assent to the devise thereby vesting the legal estate in the daughter. The daughter thereafter claimed that she was entitled to the benefit of the order of 8th March 1951. The trial Court had ordered delivery of possession of the house to the landlord's daughter Somervell, L. J., who delivered the leading judgment said that it was not an order which ceases on the death of the landlord who obtained the order conceding that there could be certain illogicality about it. The learned Lord Justice said that it could never have been suggested that if a landlord, who had obtained an order, such as the present, died before he had time to move in, the tenant could claim that the status quo ought to be re-established. The conclusion to which the Lord Justice came was reinforced by the difficulties of applying to the circumstances which might arise in other cases the principle on which the learned (County) Judge based himself Jenkins, L. J. who gave the major judgment concurring with Somervell, L. J. said as follows:

".....I think it is impossible to draw a distinction between orders based on a default of the tenant, such as non-payment of rent, and orders based on the personal circumstances of the landlord. In both cases, as it seems to me, the circumstances on the strength of which the landlord is seeking possession, and, indeed, the overriding condition as to the reasonableness of making the order, must be considered with reference to the facts as they stand at the date of the hearing. The order, once made, is an order which, though subject to the special provisions of Section 5 (2) of the Act of 1920 applicable to orders for possession in Rent Act cases, remains, notwithstanding the death of the original plaintiff, a valid order for possession and one capable of enforcement by the successors in title of the original plaintiff....."

27. We are, therefore, of the opinion that the respondents who are assignees of a decree passed in favour of their assignor for possession of the suit premises on the ground mentioned in clause (g) of Section 13(1) are entitled to execute the decree for possession. There is no force in Mr. Jahagirdar's contention that subsequent to the passing of the decree there is a change in the circumstances which change in fact brings about a change in the complexion of the decree itself and the decree becomes inexecutable. For this purpose he relied upon a judgment of the Madras High Court in *China Goundan v. Kalyanasundaram Iyer* AIR 1941 Mad 126, which lays down that a judgment-debtor is not debarred from raising a plea in execution proceedings that a change in law renders the decree inexecutable though the decree was valid when it was passed. He also relied upon the judgment of the Supreme Court in *Shantilal Thakordas and*

Others Vs. Chimanlal Maganlal Telwala, in which it was held by the Supreme Court overruling Phul Rani and Others Vs. Sh. Naubat Rai Ahluwalia, that despite the death of the plaintiff in the suit for possession of the premises on the ground of bona fide personal requirement the suit could be continued by his heirs and legal representatives. The Supreme Court according to Mr. Jahagirdar further held that if a stranger is brought on record in place of the original plaintiff the suit cannot proceed. We do not think that the law laid down by the two decisions affects our judgment. In fact, we have allowed Mr. Jahagirdar to contend that the decree is inexecutable but we have rejected his contention on the ground that no restriction which he has suggested could be read into the provisions of the Rent Act.

28. In the result, the Special Civil Application is liable to be dismissed. The point of law involved in the petition is not covered directly by any reported decision. The petitioner had consented to part with the possession of a part of the premises in his possession on the ground that it would be occupied by his landlord. One cannot, therefore, say that the petitioner was unjustified in resisting the claim for possession made by the transferee in the decree. In these circumstances we direct that the parties shall bear their own costs throughout.

29. Rule discharged.

30. Rule discharged.