
(2013) 08 AHC CK 0223
In the Allahabad High Court
Case No : C.M.W.P. No. 46231 of 2006

Smt. Sushila Devi (D) through Legal Heir and Representative	APPELLANT
Vs	
Banshilal and Others	RESPONDENT

Date of Decision : 26-08-2013

Acts Referred:

Citation : (2014) 1 ALJ 781 : (2013) 100 ALR 574 : (2013) 121 RD 205

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : R.B. Singhal, Mahesh Sharma and Vinod Sinha, for the Appellant;
A.A. Khan, S.C., for the Respondent

Final Decision : Allowed

Judgement

Rajes Kumar, J.—This writ petition is by the landlord, challenging the order of the Judge, Small Causes Court, Bulandshahar dated 8.12.2004 passed in Small Cause Case No. 25 of 1999 by which he has rejected the suit of the petitioner and the order of the Additional District Judge, Bulandshahar dated 23.10.2003 by which the revision filed by the landlord has been dismissed. The brief facts giving rise to the present writ petition are that the petitioner had let out two shops, situated at Mohalla Brahman Khurja on the rent of Rs. 750/- per month to late Kashi Ram. When late Kashi Ram could not pay the rent after 1.8.1996, despite the repeated requests, the petitioner given notice dated 8.3.1997 u/s 106 of the Transfer of Property Act (hereinafter referred to as the "Act") for arrear of rent, damages and eviction from the premises which has been served upon late Kashi Ram on 14.3.1997. Late Kashi Ram given the reply of the notice. Neither rent has been paid nor the premises has been vacated. Kashi Ram died on 25.5.1997 and after the death of Kashi Ram his heirs who are defendant-respondents in the present writ petition came in possession of the shops in dispute.

2. Thereafter, the petitioner filed a suit against the heirs of late Kashi Ram for eviction on 12.3.1999 in the Court of Civil Judge (Senior Division), Khurja, which has been registered as Small Cause Case No. 21 of 1997. The defendant-

respondents filed the written statement. However, it appears that their defence has been subsequently struck off. Therefore, the case has been contested by the defendants on the pleading made in the plaint and written statement itself.

3. The defendant-respondents contended that the suit has been filed after the death of Kashi Ram without giving any notice to them, almost after two years from the date of service of notice on late Kashi Ram. After the service of notice, u/s 106 of the Act on late Kashi Ram, the tenancy stood terminated. They have not paid any rent and they continued to occupy the premises in dispute as an unauthorized occupants and ceased to be the tenants and, therefore, the suit was not cognizable by the Judge, Small Causes Court.

4. The petitioner contended that after the death of late Kashi Ram and " after the termination of tenancy, the defendants being the legal heirs continued to remain in possession as statutory tenants as they stepped on the shoe of late Kashi Ram and once the notice u/s 106 of the Act has been given to late Kashi Ram, the tenant, which was duly served on him, the tenancy stood terminated, therefore, no further notice was required to be given to the heirs of late Kashi Ram, the defendants in the suit. It was contended that the defendants continued as the statutory tenants and, therefore, the relationship of the landlord and the tenants continued, thus, the suit was cognizable by the Judge, Small Causes Court.

5. The Judge, Small Causes Court has rejected the suit on the ground that after the service of notice on late Kashi Ram u/s 106 of the Act, the tenancy stood terminated. Therefore, the status of the heirs of late Kashi Ram was as the trespasser-occupants and they ceased to be the tenants, thus, therefore, the suit was not cognizable by the Judge, Small Causes Court. It has been held that after the termination of the tenancy, the legal right of late Kashi Ram did not transfer on the legal heirs and their status was as the trespassers.

6. Being aggrieved by the order of the Judge, Small Causes Court, the petitioner filed the revision which has been dismissed by the impugned order on the same ground.

7. Heard Sri Vinod Sinha, learned Counsel for the petitioner and Sri Atiq Ahmad Khan, learned Counsel appearing on behalf of the respondents.

8. Learned Counsel for the petitioner submitted that after the death of late Kashi Ram his heirs stepped on the shoes of their father and their status was as that of late Kashi Ram. After the termination of the tenancy, late Kashi Ram became the statutory tenant and on his death the same status was of his heirs. Once the notice u/s 106 of the Act has already been given to the tenants terminating the tenancy, no further notice was required to be given to the heirs of late Kashi Ram. The status of heirs was of a statutory tenant. Section 3(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 defines tenant which says that after the death of the tenant, the liability to pay the rent is on the heirs and the heirs would be tenants. The reliance is placed on the decision of the learned Single Judge of this Court in the case of Raja Ram and

Another Vs. State of U.P. and Others, . Division Bench decision of this Court in the case of Tarif Elahi Vs. Smt. Lal Dei, . and the decision of the Writ Petition No. 62 of 2011, Dr. Ritu Raj Gupta and others v. Laxmi Narayan Agarwal and others, decided on 7.12.2011.

9. Sri Atiq Ahmad Khan, learned Counsel for the respondents submitted that after the death of late Kashi Ram, the rent has not been paid by the heirs. They could not get the status of tenants and occupied the premises as an unauthorized occupants and, therefore, the suit was not cognizable by the Judge, Small Causes Court. Reliance is placed on the decision of the learned Single Judge of this Court in the case of Chandra Bhushan Khanna and Others Vs. Brij Nandan Singh and Another, .

10. I have considered rival submissions and perused the impugned orders.

11. The questions for consideration in the instant writ petition are:-

1. What was the status of Kashi Ram after his tenancy was terminated by notice served on him on 14.3.1997?

2. What was the status of heirs of Kashi Ram after his death on 5.5.1997?

3. Whether the suit for ejectment filed after the death of Kashi Ram against his heirs would lie before the Judge, Small Causes or before the regular Civil Court?

12. The plaintiff-petitioner instituted suit with the assertion that the U.P. Act No. 13 of 1972 (hereinafter referred to as the "Act") is applicable to the building in dispute. The defendant-respondents in their written statement admitted the said fact. They have also claimed benefit of deposits made u/s 30 and section 20(4) of the Act. Although, the defence of the defendants was struck off, but there is no dispute between the parties that the Act is applicable to the building in dispute.

13. Under common law, a tenant who continues in possession even after determination of tenancy is called a "tenant at sufferance". In R.V. Bhupal Prasad Vs. State of Andhra Pradesh and others, the Apex Court explained the rights of a "tenant at sufferance" as follows:

Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is title difference between him and a trespasser. In Mulla's Transfer of Property Act (7th Edn.) at page 633, the position of tenancy at sufferance has been stated thus: A tenancy at sufferance is merely a fiction to avoid continuance in possession operating as a trespasser. It has been described as the least and lowest interest which can subsist in reality. It, therefore, cannot be created by contract and arises only by implication of law when a person who has been in possession under a lawful title continues in possession after that title has been determined,

without the consent of the person entitled...

...Although he may not have a legal right to continue in possession after the termination of the tenancy or after the expiry of the tenancy, his possession was at sufferance recognized to be juridical and that possession is protected by Common law.

14. However, a tenant of the building to which Act applies and who continues in possession even after determination of the contractual tenancy is often called a "statutory tenant". In *Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others*, the Apex Court explained his status in the following words:

A person remaining in occupation of the premises let to him after the determination of or expiry of the period of the tenancy is commonly though in law not accurately, called a statutory tenant. Such a person is not a tenant at all: he has no estate or interest in the premises occupied by him. He has merely the protection of the statute in that he cannot be turned out so long as he pays the standard rent and permitted increases, if any, and performs the other conditions of the tenancy. His right to remain in possession after the determination of the contractual tenancy is personal: it is not capable of being transferred or assigned, and devolves on his death only in the manner provided by the statute.

15. Similar view was taken by the Apex Court in the case of *Jagdish Chander Chatterjee and Others Vs. Shri Kishan and Another*, .

16. Both these cases were considered by the Apex Court in its later decision in the case of *Damadilal and Others Vs. Parashram and Others*, and it was held as under:

Both these cases, *Anand Nivas* and *Jagdish Chander Chatterjee*, proceed on the basis that a tenant whose tenancy has been terminated, described as statutory tenant, has no estate or interest in the premises but only a personal right to remain in occupation. It would seem as if there is a distinct category of tenants called statutory tenants having separate and fixed incidents of tenancy. The term "statutory tenancy" is borrowed from the English Rent Acts. This may be a convenient expression for referring to a tenant whose tenancy has been terminated and who would be liable to be evicted but for the protecting statute, but Courts in this country have sometimes borrowed along with the expression certain notions regarding such tenancy from the decisions of the English Courts. In our opinion it has to be ascertained how far these notions are reconcilable with the provisions of the statute under consideration in any particular case...

We find it difficult to appreciate how in this country we can proceed on the basis that a tenant whose contractual tenancy has determined but who is protected against eviction by the statute, has no right of property but only a personal right to remain in occupation, without ascertaining what his rights are under the statute. The concept of a statutory tenant having no estate or property in the premises which he occupies is derived from the provisions of the English Rent

Acts. But it is not clear how it can be assumed that the position is the same in this country without any reference to the provisions of the relevant statute. Tenancy has its origin in contract. There is no dispute that a contractual tenant has an estate or property in the subject-matter of the tenancy, and heritability is an incident of the tenancy. It cannot be assumed, however, that with the determination of the tenancy the estate must necessarily disappear and the statute can only perverse his status of irremovability and not the estate he had in the premises in his occupation...

17. The Apex Court noticed contradiction in its earlier judgments and settled the controversy in its Constitutional Bench judgment in the case of *Gian Devi Anand Vs. Jeevan Kumar and Others*, It was held as under:

For an appreciation of the question it is necessary to understand the kind of protection that is sought to be afforded to a tenant under the Rent Acts and his status after the termination of the contractual tenancy under the Rent Acts. It is not in dispute that so long as the contractual tenancy remains subsisting, the contractual tenancy creates heritable rights; and, on the death of a contractual tenant, the heirs and legal representatives step into the position of the contractual tenant; and, in the same way on the death of landlord the heirs and legal representatives of a landlord become entitled to all the rights and privileges of the contractual tenancy and also come under all the obligations under the contractual tenancy. A valid termination of the contractual tenancy puts an end to the contractual relationship. On the determination of the contractual tenancy, the landlord becomes entitled under the law of the land to recover possession of the premises from the tenant in due process of law and the tenant under the general law of the land is hardly in a position to resist eviction, once the contractual tenancy has been duly determined. Because of scarcity of accommodation and gradual high rise in the rents due to various factors, the landlords were in a position to exploit the situation for unjustified personal gains to the serious detriment of the helpless tenants. Under the circumstances it became imperative for the Legislature to intervene to protect the tenants against harassment and exploitation by avaricious landlords and appropriate legislation came to be passed in all the States and Union Territories where the situation required an interference by the Legislature in this regard. It is no doubt true that the Rent Acts are essentially meant for the benefit of the tenants. It is, however, to be noticed that the Rent Acts at the same time also seek to safeguard legitimate interests of the landlords. The Rent Acts which are indeed in the nature of social welfare legislation are intended to protect tenants against harassment and exploitation by landlords, safeguarding at the same time the legitimate interests of the landlords. The Rent Acts seek to preserve social harmony and promote social justice by safeguarding the interests of the tenants mainly and at the same time protecting the legitimate interest of the landlords. Though the purpose of the various Rent Acts appear to be the same, namely, to promote social justice by affording protection to tenants against undue harassment and exploitation by landlords, providing at the same time for

adequate safeguards of the legitimate interests of the landlords, the Rent Acts undoubtedly lean more in favour of the tenants for whose benefit the Rent Acts are essentially passed. It may also be noted that various amendments have been introduced to the various Rent Acts from time to time as and when situation so required for the purpose of mitigating the hardship of tenants.

Keeping in view the main object of Rent Control Legislation, the position of a tenant whose contractual tenancy has been determined has to be understood in the light of the provisions of the Rent Acts. Though provisions of all the Rent Control Acts are not uniform, the common feature of all the Rent Control Legislation is that a contractual tenant on the termination of the contractual tenancy is by virtue of the provisions of the Rent Acts not liable to be evicted as a matter of course under the ordinary law of the land and he is entitled to remain in possession even after determination of the contractual tenancy and no order or decree for eviction will be passed against a tenant unless any ground which entitles the landlord to get an order or decree for possession specified in the Act is established. In other words, the common feature of every Rent Control Act is that it affords protection to every tenant against eviction despite termination of tenancy except on grounds recognized by the Act and no order or decree for eviction shall be passed against the tenant unless any such ground is established to the satisfaction of the Court.

18. The Apex Court approved the view taken in the earlier judgment in the case of *Damadilal (supra)* and held as under:

It cannot be assumed that with the determination of the tenancy, the estate must necessarily disappear and the statute can only preserve the status of irremovability and not the estate he has in the premises in his occupation; and it is not possible to claim that the sanctity of contract cannot be touched by legislation.

19. In the same judgment, the Apex Court also quoted with approval the following observations in the case of *V. Dhanapal Chettiar Vs. Yesodai Ammal*,

While on this question it will be appropriate to quote the following observations of this Court in the case of *V. Dhanapal Chettiar Vs. Yesodai Ammal*,

Once the liability to be evicted is incurred by the tenant, he cannot turn round and say that the contractual lease has not been determined. The action of the landlord in instituting a suit for eviction on the ground mentioned in any State Rent Act will be tantamount to an expression of his intention that he does not want the tenant to continue as his lessee and the jural relationship of lessor and lessee will come to an end on the passing of an order or a decree for eviction. Until then, under the extended definition of the word "tenant" under the various State Rent Acts, the tenant continues to be a tenant even though the contractual tenancy has been determined by giving of a valid notice u/s 106 of the Transfer of Property Act. In many cases the distinction between a contractual tenant and a statutory tenant was alluded to for the purpose of elucidating some particular

aspects which cropped up in a particular case. That led to the criticism of that expression in some of the decisions. Without detaining ourselves on this aspect of the matter by any elaborate discussion, in our opinion it will suffice to say that the various State Rent Control Acts make a serious encroachment in the field of freedom of contract. It does not permit the landlord to snap his relationship with the tenant merely by his act of serving a notice to quit on him. In spite of the notice, the law says that he continues to be a tenant and he does so enjoying all the rights of a lessee and is at the same time deemed to be under all the liabilities such as payment of rent, etc. in accordance with the law.

Thereafter, the Apex Court concluded as under:

These observations were made by a seven Judge Bench of this Court. It is no doubt true that these observations were made while considering the question of requirement of a notice u/s 106 of the Transfer of Property Act before the institution of suit for recovery of possession of premises to which the Rent Act applies. These observations, however, clearly go to establish that mere determination of the contractual tenancy does not in any way bring about any change in the status of a tenant. As aptly observed in this decision, "it will suffice to say that the various State Rent Control Acts make a serious encroachment in the field of freedom of contract. It does not permit the landlord to snap his relationship with the tenant merely by his act of serving a notice to quit on him. In spite of the notice, the law says that he continues to be a tenant and he does so, enjoying all the rights of a lessee and is at the same time deemed to be under all the liabilities such as payment of rent etc. in accordance with the law.

We now proceed to deal with the further argument advanced on behalf of the landlords that the amendment to the definition of "tenant" with retrospective effect introduced by the Delhi Rent Control Amendment Act (Act 18 of 1976) to give personal protection and personal right of continuing in possession to the heirs of the deceased statutory tenant in respect of residential premises only and not with regard to the heirs of the "so-called statutory tenant" in respect of commercial premises, indicates that the heirs of so-called statutory tenant, therefore, do not enjoy any protection under the Act. This argument proceeds on the basis that in the absence of any specific right created in favour of the "so-called statutory tenant" in respect of his tenancy, the heirs of the statutory tenant who do not acquire any interest or estate in the tenanted premises, become liable to be evicted as a matter of course. The very premise on the basis of which the argument is advanced, is, in our opinion, unsound. The termination of the contractual tenancy in view of the definition of tenant in the Act does not bring about any change in the status and legal position of the tenant, unless there are contrary provisions in the Act; and, the tenant notwithstanding the termination of tenancy does enjoy an estate or interest in the tenanted premises. This interest or estate which the tenant under the Act despite termination of the contractual tenancy continues to enjoy creates a heritable interest in the absence of any provision to the contrary. We have earlier noticed the decision of this

Court in Damadilal's case. This view has been taken by this Court in Damadilal's case and in our opinion this decision represents the correct position in law. The observations of this Court in the decision of the seven Judge Bench in the case of V. Dhanapal Chettiar v. Yesodai Ammal (supra) which we have earlier quoted appear to conclude the question. The amendment of the definition of tenant by the Act 18 of 1976 introducing particularly section 2(1)(iii) does not in any way mitigate against this view. The said sub-clause (iii) with all the three Explanations thereto is not in any way inconsistent with or contrary to sub-clause (ii) of section 2(1) which unequivocally states that tenant includes any person continuing in possession after the termination of his tenancy. In the absence of the provision contained in section 2(1)(iii), the heritable interest of the heirs of the statutory tenant would devolve on all the heirs of the "so-called statutory tenant" on his death and the heirs of such tenant would in law step into his position. This sub-clause (iii) of section 2(1) seeks to restrict this right insofar as the residential premises are concerned. The heritability of the statutory tenancy which otherwise flows from the Act is restricted in case of residential premises only to the heirs mentioned in section 2(1)(iii) and the heirs therein are entitled to remain in possession and to enjoy the protection under the Act in the manner and to the extent indicated in section 2(1)(iii). The Legislature, which under the Rent Act affords protection against eviction to tenants whose tenancies have been terminated and who continue to remain in possession and who are generally termed as statutory tenants, is perfectly competent to lay down the manner and extent of the protection and the rights and obligations of such tenants and their heirs. Section 2(1)(iii) of the Act does not create any additional or special right in favour of the heirs of the "so-called statutory tenant" on his death, but seeks to restrict the right of the heirs of such tenant in respect of residential premises. As the status and rights of a contractual tenant even after determination of his tenancy when the tenant is at times described as the statutory tenant, are fully protected by the Act and the heirs of such tenants become entitled by virtue of the provisions of the Act to inherit the status and position of the statutory tenant on his death, the Legislature which has created this right has thought it fit in the case of residential premises to limit the rights of the heirs in the manner and to the extent provided in section 2(1)(iii). It appears that the Legislature has not thought it fit to put any such restrictions with regard to tenants in respect of commercial premises in this Act.

20. The Constitutional Bench judgment in the case of Gian Devi still holds the field and has been followed by the Apex Court in its later judgment in the case of Tara Chand and Another Vs. Ram Prasad, .

21. In the light of the pronouncement of the Apex Court in Gian Devi's case, the provisions of U.P. Act No. 13 of 1972 are to be explained.

22. Section 3(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 reads as follows:

3. Definitions.--In this Act, unless the context otherwise requires-

(a) "tenant", in relation to a building, means a person by whom its rent is payable, and on the tenant's death-

(1) in the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death;

(2) in the case of a non-residential building, his heirs.

23. Section 20 places an embargo on eviction of a tenant after determination of his tenancy except on certain grounds mentioned therein. Sub-section (4) of section 20 of the Act affords another opportunity to the statutory tenant to save himself from eviction if he deposits the entire defaulted amount of rent plus interest and cost on first date of hearing. Thus, by operation of law, he continues to be a tenant notwithstanding determination of the tenancy and availability of statutory ground of eviction. Section 29-A of the Act affords opportunity to the tenant of open land who has made permanent constructions and against whom suit for eviction is pending on the date of commencement of the section to pay enhanced rent and save himself from eviction. The said protection was extended to tenants of buildings against whom decree for eviction has already been passed under common law, but their appeal/revision is pending, in view of the provisions of section 40 of the Act. The perusal of the scheme of the Act reflects that the Legislature has not made any distinction between the tenant whose contractual tenancy is still subsisting vis-à-vis a tenant whose contractual tenancy has been determined. This is apparently for the reason that by operation of law, a statutory tenant continues to enjoy all the rights in the demised premises as are available to a contractual tenant.

24. In the aforesaid background, on consideration of the definition of a "tenant" as used in section 3(a) of the Act, it will be apparent that after his death, it means such of his heirs as normally resided with him in the building at the time of his death, in case of a residential building and all his heirs, in case of a non-residential building.

25. Thus, after the death of a statutory tenant, his heirs inherit the tenancy rights and acquire the status of a statutory tenant. There is nothing in the scheme of the Act to indicate otherwise. This also flows out from the law expounded by the Apex Court in its Constitutional Bench judgment in the case of Gian Devi (supra) wherein it was held that after determination of contractual tenancy, the tenant who continues in possession will have interest in the estate or the demise premises. The incidence of inheritance as applicable in the case of immovable property will also apply in the case of inheritance to the statutory tenancy.

26. Thus, in view of the protection granted by the Act even after determination of the contractual tenancy, he continues to be recognised as a statutory tenant and will have interest in the estate (property which is subject-matter of his tenancy). After his death, his heirs will step into his shoes and will inherit the estate, as in case of any other immovable property but subject to limitations

prescribed under the Act in case of residential building. They will acquire the status of a statutory tenant. They cannot be termed as unauthorized occupants or rank trespassers till evicted in accordance with law on one or the other ground permissible under the Act.

27. In view of the above discussions, the answer to question No. 1 is that Kashi Ram after determination of his tenancy by notice served on him on 14.3.1997 continued to have the status of the statutory tenant.

28. The answer to question No. 2 is that the heirs of Kashi Ram after his death on 25.5.1997 have stepped into his shoes and were to be treated as statutory tenants under the Act.

29. The answer to the 3rd question regarding maintainability of the suit is to be found from the provisions of Provincial Small Causes Court Act, 1887.

30. Section 15 of the Provincial Small Cause Courts Act, 1887 reads as follows:

15. Cognizance of suits by Courts of Small Causes.--(1) A Court of Small Causes shall not take cognizance of the suits specified in the Second Schedule as suits expected from the cognizance of a Court of Small Causes.

(2) Subject to the exceptions specified in that Schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five thousand rupees shall be cognizable by a Court of Small Causes.

31. Article 4 of IIInd Schedule of Provincial Small Cause Courts Act, 1887 reads as follows:

(4) a suit for the possession of immovable property or for the recovery of an interest in such property, but not including a suit by a lessor for the eviction of a lessee from a building after the determination of his lease and for the recovery from him of compensation for the use and occupation of that building after such determination of lease.

32. It is evident from perusal of the aforesaid provisions that a suit for possession of immovable property or for recovery of any interest in such property is excepted from the cognizance of a Judge, Small Causes. However, Article 4 itself embodies an exception. A suit against a lessee for eviction from a building after determination of his lease and for recovery of compensation for use and occupation will continue to lie before Judge, Small Causes.

33. In the instant case, since it has already been held that heirs of Kashi Ram continued to enjoy the status of a statutory tenant and, therefore, the suit for eviction filed against them will be a suit by a lessor for eviction of lessee from a building after determination of his lease. Such a suit was maintainable before Judge, Small Causes.

34. In the case of Prithviraj Sharma v. Smt. Ram Pyary and another, 1978 ALJ

813 this Court has observed as under:

This legal position no longer subsists after the Legislature has by various legislative measures provided statutory protection to tenants against eviction. By section 20(1) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, a protection from eviction has been conferred even on those tenants whose tenancy has expired by efflux of time. Thus their status has become that of statutory tenants and it cannot be said any longer that they are mere trespassers. Thus the relationship of landlord and tenant has, in view of statutory provisions, continued to subsist. There is, therefore, no force in the contention that the plaintiff could only have filed a title suit for possession as against a trespasser in the regular Civil Court and not a suit for ejectment in the Small Cause Court.

35. The learned Counsel for the respondents has placed great emphasis on the judgment of this Court in the case of Chandra Bhushan Khanna v. Brij Nandan Singh (supra). In that case the plaintiff had let out the shop in dispute to one Ram Ratan Lal Khanna for a period of 2 years since 2.6.1946. During continuance of tenancy, U.P. Act 1947 came into force. Tenancy of Ram Ratan Lal Khanna was terminated by a notice dated 5.6.1969. Ram Ratan Lal Khanna died on 2.12.1969. Suit was instituted against the heirs of Ram Ratan Lal Khanna with the allegation that since Ram Ratan Lal Khanna was only a statutory tenant and, therefore, after his death, the tenancy rights have not devolved on his heirs. They were sued as trespassers for wrongful occupation of the shop and for damages. It was in the aforesaid background that it was held in the said case as under:--

...In the present case the plaintiff came to the Court on the allegation that the relationship of lessor and lessee, which existed between the plaintiff and Ram Ratan Lal Khanna, was terminated by a valid notice before the latter's death. On the termination of his tenancy he could claim only the protection provided by U.P. Act No. 3 of 1947. On his death, however, his heirs did not inherit any right or interest in the property as the statutory tenancy rights which Sri Khanna had after the termination of his contractual tenancy was not inheritable. There is no assertion in the plaint that the plaintiff and the defendants stood in the relationship of lessor and lessee at any stage. On the plaint allegation it is obvious that the suit was not cognizable by the Court of Small Causes as envisaged in Article 4 of the second schedule. The suit was rightly instituted in the Court of Munsif and its transfer to the Court of Small Causes on the enforcement of U.P. Act No. 37 of 1972 was illegal.

36. Thus, in the said case, on account of the fact that the plaintiff had himself treated the defendants of the suit as trespassers that it was held to be triable by the regular Civil Court. However, in the instant case, perusal of plaint assertion will demonstrate that the tenants were treated as statutory tenants after the death of their father Kashi Ram. There is no assertion in the plaint that their status is that of a trespasser or an illegal occupant. In view of it, the judgment in

the case of Chandra Bhushan Khanna v. Brij Nandan Singh (supra) is not applicable to the facts of the present case. Further, it is apparent that in the aforesaid case, this Court had not gone into the question regarding the status of the heirs of a deceased tenant after determination of statutory tenancy. The judgment has been rendered on the pleadings made in the plaint of that case. However, in view of the authoritative pronouncement of the Apex Court in its Constitutional Bench judgment in the case of Gian Devi (supra) it can no more be held that the heirs of Kashi Ram are trespassers or suit for their eviction would lie before the regular Civil Court.

37. There is another way of looking to the question posed before the Court, which also leads to the same conclusion. The exception carved out under Article 4 makes suits filed by lessor against lessee of building after determination of the statutory tenancy cognizable by a Judge, Small Causes. The exception to Article 4 of Schedule II itself provides that even after determination of statutory tenancy, suit for ejectment and for recovery of compensation filed against such a person will lie before Judge, Small Causes. A Division Bench of this Court in the case of Tarif Elahi v. Smt. Lal Dei (supra) has held that the heirs of tenant who have stepped into his shoes cannot claim a better right or title. It was observed as under:--

...The bar created by section 3 of the temporary (sic.) Act having been removed in favour of the landlord he was entitled to file a suit against anybody who succeeded to the tenancy and stepped into the shoes of the previous tenant. We think that the same principle is applicable to the removal of bar by default also. The bar having once been removed the heir cannot claim a better right than his predecessor.

38. In view of it, if the suit against the original lessee after determination of his statutory tenancy will be maintainable before the Judge, Small Causes, the jurisdiction of Judge, Small Causes to entertain such suits cannot be ousted merely on account of the fact that before the suit could be instituted, he had died and in his place his heirs who have stepped into his shoes, are occupying the premises.

39. In view of the above discussions, there is no hesitation in holding that suit for ejectment of the heirs of Kashi Ram would lie before Judge, Small Causes and not before the regular Civil Court. In the result, the writ petition is allowed. The order of the Judge, Small Causes Court, Bulandshahar dated 8.12.2004 and the order of the Additional District Judge, Bulandshahar dated 23.10.2003 are set aside. The matter is relegated to the Judge, Small Causes Court, Bulandshahar to decide the Small Cause Case No. 25 of 1999 afresh, on merit, within a period of six months from the date of presentation of certified copy of this order.