
(1998) 02 BOM CK 0070
In the Bombay High Court
Case No : Second Appeal No. 40 of 1995

Smt. Sushilabai Dantye and others	Vs	APPELLANT
Ganpat Kudtarkar		RESPONDENT

Date of Decision : 17-02-1998

Acts Referred:

Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 — Section 2, 56

Citation : (1999) 2 BomCR 588

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : Sudin M. Usgaonkar, for the Appellant; N.K. Swaikar, for the Respondent

Judgement

R.M.S. Khandeparkar, J.—This appeal was admitted on the following substantial questions of law:

- (1) Whether statutory tenancy under the Goa Rent Control Legislation is heritable or not?
- (2) Whether the amendment in 1978 of the definition of the word "tenant" under the Goa legislation is prospective or retrospective?
- (3) Even if the amendment of the definition of "tenant" is not retrospective, whether the appellants can still contend that the tenancy is heritable?
- (4) Whether the Civil Court has jurisdiction to grant a decree for eviction against the heirs of the tenant or whether the jurisdiction rests exclusively with the Rent Controller under the Rent Control Legislation?

2. The undisputed facts which are relevant for the decision are that the respondent herein who is the owner in possession leased out the house in question to one Ramnath Mangesh Dantye, who was the husband of the appellant No. 1 and the lease deeds were registered from time to time and last

such lease deed is dated 17-10-1974 for a period of three years. The said period of lease expired on 16th October, 1977, and consequently, the agreement of lease came to an end on 16-10-1977. However, though the lease was not renewed, the late Ramnath Mangesh Dantye, continued to occupy the house in question along with the appellants herein as the statutory tenant in respect of the suit house. The said Ramnath expired on 7-12-1977, leaving behind the appellants herein who continued to occupy the suit house after his death. The respondent herein thereupon filed a suit for eviction of the appellants on the ground that the statutory tenancy in favour of Ramnath Dantye came to an end on his death on 7-12-1977, and that the statutory tenancy being not heritable, the appellants were mere trespassers, having no right, title or interest of any kind to continue to occupy the suit house. The claim of the respondent was contested by the appellants on various grounds, including the ground of lack of jurisdiction to the Civil Court to entertain the suit for eviction of the appellants, they being the lawful heirs of the statutory tenant and that such tenancy is heritable. It was contended that the Civil Court has no jurisdiction to evict the tenant from a building/premises in terms of the provisions contained in Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1967 (hereinafter called as "the said Act"). The trial Court, upon hearing the parties, partly decreed the suit directing the appellants to vacate the suit house, simultaneously holding that the late Ramnath Dantye was a statutory tenant and that such tenancy was not heritable. The appeal preferred against the said judgment was dismissed by the lower Appellate Court confirming the findings of the trial Court, while holding that the statutory tenancy in favour of Ramnath came to an end after his death and, therefore, the appellants were the trespassers.

3. The suit which was filed by the respondent in the trial Court was registered as Regular Civil Suit No. 31/1978. The appeal preferred against the decree of the trial Court by the appellants herein was registered as Regular Civil Appeal No. 1/92. The trial Court's decree is dated 27-11-1991, whereas, that of the lower Appellate Court is dated 16-9-1995.

4. While assailing the impugned decree, Shri S.M. Usgaonkar, learned Advocate appearing for the appellants contended that in terms of section 2(p) of the said Act, the tenancy in respect of the leased premises has always been heritable, irrespective of the fact whether it was contractual or statutory and that the said definition always provided that even after termination of tenancy, if a person continues to be in possession of the premises until he is lawfully evicted by an order of the Court, he continues to be a tenant within the meaning of section 2(p) under the said Act and, therefore, considering section 56 of the said Act, the Civil Court has no jurisdiction to order eviction of late Ramnath Dantye even after expiry of contractual tenancy in the year 1977. In other words, if the suit was to be filed against the said late Ramnath Dantye after expiry of contractual tenancy in the year 1977, the same could not have been entertained by the Civil Court. Applying the same principle to a person whose tenancy rights are said to be

terminated but continues to be in possession of the leased premises till he is lawfully evicted by the Order of the Court, he is to be construed as the tenant within the meaning of section 2(p) of the said Act. And, therefore, no Civil Court could have entertained any suit for eviction of the appellants. That apart, the Legislature in its wisdom has specifically amended the said section 2(p) thereby has clarified that certain class of people after the death of original tenant shall continue to enjoy the status of statutory tenants, provided they were living with such tenant upto the time of this death in case of a residential premises. This according to learned Advocate is clear from the amendment to section 2(p) by the Legislature in the year 1978, which came into force with effect from 18-5-78. Though the amendment was sought to be brought into force from 18-5-78, the effect of such amendment was retrospective in nature in view of the scope of the definition of term "tenant" in section 2 (p) as it stood originally. In support of his submission, Shri Usgaonkar, relied upon the judgment of the Apex Court in the case of Gian Devi Anand Vs. Jeevan Kumar and Others, . According to Shri Usgaonkar, though the said judgment is with reference to the provision of the Delhi Rent Control Act, the provision of the said Act is in para materia with the provisions contained in the Delhi Rent Control Act, and, therefore, is squarely applicable to the case in hand. He further submitted that the term "tenant" as defined in section 2(p) even prior to its amendment, included contractual as well as statutory tenants. What has been done by the amendment is only to restrict the benefit of inheritance to a particular class of people in case of a residential premises. Placing reliance on Gain Devi Anand's case, he further submitted that there is no scope for a different treatment to statutory tenants from that one to the contractual tenants and the same approach is to be adopted in case of both the tenants as has been held by the Apex Court in the said decision. Being so, according to learned Advocate, the Court had clearly erred in holding that the tenancy was not statutorily heritable and that the Civil Court has jurisdiction to entertain the eviction proceedings against the appellants.

5. Shri. N.K. Sawaikar, learned Advocate for the respondent, on the other hand, submitted that section 2(p) of the said Act was amended only in the year 1978, and was brought into force w.e.f. 18-5-1978 and it is not of retrospective nature. Undisputedly, contractual tenancy came to an end on 16-10-1977. The statutory tenancy expired on 7-12-1977. The provisions which came into force by virtue of the amendment in the year 1978 were not in force on the date of death of Ramnath and, therefore, the appellants are not entitled to claim any benefit under the amended section 2(p) of the said Act. According to learned Advocate, the decision of the Supreme Court in Gain Devi Anand's case was in relation to the provisions contained in Delhi Rent Control Act, wherein there was amendment with retrospective effect and this is evident from the Judgment itself. Being so, the said decision cannot be applied to the facts in the case in hand, wherein the amendment was brought much after the death of the statutory tenant.

6. As already seen above, the factual matrix of the instant case is not in dispute

and in order to answer the substantial question of law formulated above the basic point which requires to be considered is the scope of section 2(p) of the said Act pursuant to the amendment in the year 1978 as well as prior thereto. Section 2(p) of the said Act prior to the amendment of the year 1978, provided thus:-

" "tenant" means any person by whom or on whose account or behalf the rent of any building is, or but for special contract would be, payable and includes a sub-tenant and also any person continuing in possession after the termination of his tenancy, but shall not include any person against whom any order or decree for eviction has been made."

The said definition was amended by Act No. 7 of 1978 and the amended section reads thus:-

"2(p) "tenant" means any person by whom or on whose account or behalf the rent of any building is, or but for special contract would be, payable and includes (in the event of his death the surviving spouse, or any son, or unmarried daughter or father or mother who has been living with him as a member of his family upto the date of his death and) a sub-tenant and also any person continuing in possession after the termination of his tenancy, but shall not include any person against whom any order or decree for eviction has been made."

7. A plain reading of unamended section 2(p) discloses that the tenant is a person who occupies a building on rent and includes a sub-tenant as well as any person continuing in possession of the premises after termination of his tenancy and till he is lawfully evicted by an order of a Court. In other words, to be a tenant of the building by virtue of unamended definition of the term "tenant", it was not necessary to be a contractual tenant, but it also included a statutory tenant. This is clear from the portion of the definition of term "tenant" in section 2(p), wherein it was specifically provided that "any person continuing in possession after the termination of his tenancy". The question of a person continuing in possession after termination of tenancy can arise only in case of contractual tenancy or statutory tenancy being terminated by virtue of express notice. Some of the Rent Acts do require such termination tenancy before seeking eviction of the tenants. However, in the said Act, there is no provision whereby it is obligatory upon the landlord to terminate to tenancy in order to initiate proceedings for eviction. Whenever a landlord desires to file eviction proceedings against his tenant on account of change of user or for sub-letting of the premises or on account of the tenant acquiring his own premises in the town and the like, the landlord need not give prior notice of termination of tenancy as such to the concerned tenant, but can straight away file the proceedings for eviction of the tenant on any of those grounds. In other words, there is no provision in the said Act requiring the landlord to terminate the tenancy as such before seeking to evict him through the Court of law. No doubt, a statutory notice has been certainly provided for before filing eviction proceedings in case of

eviction on account of default in payment of rent. But the said provision nowhere provides that it is a notice of termination of tenancy as such. Therefore, it is clear that the termination of tenancy referred to in section 2(p) can be of the contractual tenancy alone and not of statutory tenancy. Once it is clear that section 2(p) provided statutory protection even to a person whose contractual tenancy rights are terminated, it is clear that the unamended section 2(p) not only referred to statutory tenants, but also referred to the contractual tenants. It is, therefore, clear that the legislature by the amendment in 1978, specifically provided that in case of death of a tenant, the surviving spouse, son, unmarried daughter and parents, who were living with him upto the date of his death, would also acquire the status of tenant.

8. The Apex Court in Gian Devi Anand's case while dealing with various provisions of the Delhi Rent Control Act, has clearly held that in a Rent Act wherein a tenant includes any person who continues to remain in possession even after the termination of his contractual tenancy till a decree for eviction against him is passed, such a tenant even after determination of the tenancy would continue to have interest in the tenanted premises and his rights in the premises would be heritable and the heirs of deceased tenant in absence of any provision in the statute providing to the contrary would step into the shoes of the deceased tenant and all rights and obligations of the deceased tenant including the protection afforded to the deceased tenant under the statute would devolve upon the heirs of such deceased tenant. This being the ratio of the decision of the Apex Court in the matter of Gian Devi Anand v. Jeevan Kumar and others (supra) and considering the definition, amended as well as unamended, of the term "tenant" u/s 2(p) of the said Act, it is clear that the said Act clearly defines the term "tenant" to include a person continuing to be in possession even after termination of his contractual tenancy till the date of lawful decree of eviction against him. The Apex Court having clearly held that such a person acquires interest in the tenanted premises and there being no provision in the said Act, which curtails any of the right of the heirs of a tenant, including statutory tenant, except to the extent prescribed in section 2(p) of the said Act by way of amendment in the year 1978, it cannot be said that a statutory tenancy is not heritable within the meaning of section 2(p) of the said Act.

9. In fact, the provisions which are transcribed in the Judgment of the Apex Court in respect of term "tenant" under the Delhi Rent Control Act, clearly disclose that the said definition is almost in para-materia with the definition of the term "tenant" under the said Act. In terms of section 2(i) of the Delhi Rent Control Act, tenant means a person by whom or on whose account or behalf the rent of any premises is, or but for special contract would be, payable and includes a sub-tenant and also any person continuing in possession after the termination of his tenancy and in the event of the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and conditions specified respectively in Explanation I and Explanation II to the Clause. Such of the aforesaid persons are : (a) spouse, (b) son or

daughter, or, where there are both son and daughter, both of them, (c) parents, (d) daughter-in-law, being the widow of his pre-deceased son, as had been ordinarily living in the premises with such person as a member or members of his family upto the date of his death but does include, (A) any person against whom an order or decree for eviction has been made, except where such decree or order for eviction is liable to be re-opened under the proviso to section 3 of the Delhi Rent Control (Amendment) Act, 1976, (B) any person to whom a licence, as defined by section 52 of the Indian Easements Act, 1882, has been granted. In other words, under the Delhi Rent Control Act, the term "tenant" also includes any person continuing in possession after the termination of his tenancy, as it is stipulated u/s 2(i) of the Delhi Rent Control Act. Referring to the said section, the Apex Court observed in the said Judgment thus :-

"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 provision 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 an heritable interest in the absence of any provision to the contrary."

The Judgment further reads that:

"..... 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 subsection 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-section (iii) of section 2(1) seeks to restrict this right in so far 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 sub-section 2(1)(iii)".

The Apex Court has further held therein that the amendment brought about to section 2 of the Delhi Rent Control Act, did not create any additional or special right in favour of the heirs of the tenant in that regard. The Apex Court has further held therein thus :-

"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 his right, has thought it fit in 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 is thus clear that considering the scope of section 2(1)(iii) whereby the Delhi Rent Control Act was sought to be amended by specifying heirs of the deceased tenant in case of residential premises, the Apex Court has clearly held that by the said amendment, the Legislature did not create any additional or special right in favour of the heirs, but only restricted the rights of heirs of such tenant in respect of the residential premises. In other words, the Apex Court has held that the right of heritability was already there even before amendment was brought into force. The scope of the amendment was only to restrict the right of inheritance in favour of specific class of people as has been done in case of said Act by Legislature. The amendment which was brought in the year 1978, did not for the first time provide for heritability of tenancy right in favour of the spouse and other class of people specified in section 2(p) by way of amendment, but on the contrary, by the said amendment, the right of inheritance has been restricted in favour of the persons specified therein. Applying the test laid down in the matter of Gian Devi Anand's case, therefore, the argument of the learned Advocate for the respondent that the amendment is prospective in nature cannot be accepted. It is clear from the definition of term "tenant" in section 2(p), even as it existed before amendment in the year 1978 and particularly considering the ratio of the decision of Gian Devi Anand's case that the tenancy was always heritable under the said Act and what was done by the amendment in the year 1978, was to restrict the right of inheritance in favour of specified class of people. Undisputedly, the appellant No. 1 is the spouse and the other appellants are sons and unmarried daughters of the deceased tenant and were living with him upto the date of death of the tenant. The appellants, are, therefore, within the zone of specified class of people and therefore are entitled for protection under the said Act being the heirs of statutory tenant late Ramnath Dantye.

10. Therefore, as regards the question framed at No. 1, it is to be held that statutory tenancy under the said Act is heritable. As regards question No. 2, whether the amendment in the year 1978, to the definition of the word "tenant" is prospective or retrospective in nature, as already held above is of no relevance considering the scope of the definition of term "tenant" as it stood even prior to the amendment and, therefore, the said question does not at all arise for consideration. As regards the third question, the same is to be answered in the affirmative as it is already held above that the tenancy is heritable. The appellants are therefore the tenants within the meaning of the term "tenant" under the said Act. In view of the provisions contained in section 56 of the said Act which clearly provides that no Court shall have jurisdiction to settle, determine or deal with any question which is by or under this Act required to be settled, determined or dealt with the Controller, the Civil Court had no jurisdiction to entertain the suit for eviction of the appellants, filed by the respondent herein. The fourth question, therefore, as framed is to be answered

in the negative as far as first part thereof is concerned and in the affirmative, as far as second part is concerned.

11. In the result, the appeal succeeds and the same is hereby allowed. The Judgment and the Decree of the trial Court as well as that of the lower Appellate Court are set aside. The suit filed by the respondent is, hereby, dismissed for want of jurisdiction to entertain the same. There shall be no order as to costs.

12. Appeal allowed.