
(2013) 08 CHH CK 0002
In the Chhattisgarh High Court
Case No : Second Appeal No. 254 of 2009

Trilokchand Jain	Vs	APPELLANT
Smt. Ratnibai and Others		RESPONDENT

Date of Decision : 22-08-2013

Acts Referred:

Citation : (2013) 3 BLJ 394 : (2014) 1 CGLJ 186 : (2013) 5 MPHT 58

Hon'ble Judges : Nawal Kishore Agarwal, J

Bench : Single Bench

Advocate : B.P. Sharma, for the Appellant; Satyawar Agrawal and Mr. R.K. Pali, for the Respondent

Judgement

Nawal Kishore Agarwal, J.—This is defendant's second appeal filed u/s 100 of the CPC against the judgment and decree dated 6-4-2009 passed by the 9th Additional District Judge (FTC), Durg in Civil Appeal No. 7-A/2006 affirming the judgment and decree dated 30-7-2005 passed by the 9th Civil Judge Class II, Durg in Civil Suit No. 29-A/2001. The original plaintiff-Ramlal @ Ram filed a suit for eviction against the appellant on the ground of Section 12(1)(f) of the M.P./C.G. Accommodation Control Act, 1961 (for short "the Act of 1961"). During the pendency of the civil suit, plaintiff died and his legal representatives were brought on record.

2. According to the plaintiff, the suit premises was let out to defendant's father-Roopchand Jain in the year 1969, who was doing cloth business in the suit premises in the name and style of Prakash Vastra Bhandar. After his death, defendant (appellant herein) alone is doing the same business and is also paying rent to him, though receipts were being issued in the name of late Roopchand Jain and his other family members have no right or interest in it.

3. The defendant denied the claim, also pleaded that they are 4 brothers, who inherited the tenancy, and therefore, other three brothers were also necessary party in the suit he alone is not the tenant.

4. The Trial Court decreed the suit. The decree was affirmed by the First Appellate Court. Hence, this second appeal.

5. The instant appeal was admitted for hearing on the following substantial questions of law:--

Whether both the Courts below were justified in holding that the present appellant alone was tenant and his brothers were not necessary party?

6. Shri B.P. Sharma, learned Counsel appearing for the appellant, by referring to Para 2 of the plaint averments, would submit: the original tenant was late Roopchand Jain. Admittedly, the receipts were being issued by the plaintiff to defendant in the name of late Roopchand Jain, and therefore, in the light of definition of tenant u/s 2(i) of the Act of 1961, the rent was paid by the appellant not for himself but on behalf of legal representatives of deceased-Roopchand Jain. Tenancy being heritable, after death of original tenant-Roopchand Jain, it would devolve upon all the legal heirs of late Roopchand Jain including the appellant and the appellant alone would not be tenant. Therefore, without impleading appellant's other three brothers as party respondents, the suit filed by the plaintiff, on the face, was bad. It was further contended, such decree, if at all, passed against the appellant would not be binding upon other sons of late Roopchand Jain. Reliance was placed by Shri B.P. Sharma on the judgment of Supreme Court in the cases of Kanhiya Singh Santok Singh and Others Vs. Kartar Singh, , Gian Devi Anand Vs. Jeevan Kumar and Others, and Textile Association (India) Bombay Unit Vs. Balmohan Gopal Kurup and another, . It was further contended, the reliance placed by the First Appellate Court upon the judgment of Supreme Court in the case of Pushpa Rani and Others Vs. Bhagwanti Devi and Another, , is misplaced, inasmuch as, the facts of the above cases were entirely different.

7. On the other hand, Shri Satyawan Agrawal, learned Counsel appearing for the respondents, supported the judgment and decree impugned and submitted, after death of Roopchand Jain, the appellant alone was doing the business, also paid the rent, has not denied the factum of exclusive possession over the suit premises, also admitted that after death of his father, he alone is in occupation of the suit premises as tenant in several proceedings filed by him before the Rent Controlling Authority and also before the Civil Court, and therefore, it cannot be said that after death of Roopchand Jain, he alone was not tenant or that his brothers, who were doing business separately in different shops and have nothing to do with the suit premises, are necessary parties. It was further contended, merely because the rent receipts have been issued in the name of deceased-person, it cannot be said that the deceased-person would remain as a tenant. According to Shri Agrawal, even if it is so, then the appellant acted as a Manager of the family, and therefore, his brothers were not necessary party and the decree passed against the appellant alone is good would be binding on all the legal representatives of deceased-Roopchand Jain and the suit has been rightly decreed in plaintiffs favour.

8. I have heard learned Counsel for the parties and perused the record of both the Courts below including judgment and decree impugned.

9. Section 2(i) of the Act of 1961 defines "tenant" to mean, unless the context otherwise requires, a person by whom or on whose account or behalf the rent of any accommodation is, or, but for a contract express or implied, would be payable for any accommodation and includes any person occupying the accommodation as a sub-tenant and also, any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act; but shall not include any person against whom any order or decree for eviction has been made.

10. The definition makes a person continuing in possession after the determination of his tenancy a tenant unless a decree or order for eviction has been made against him, thus, putting him on par with a person whose contractual tenancy still subsists.

11. The Supreme Court in the case of Damadilal and Others Vs. Parashram and Others, has observed in Para 12 as under:--

12. Section 2(i) of the Madhya Pradesh Accommodation Control Act, 1961 defines "tenant" to mean, unless the context otherwise requires, a person by whom or on whose account or behalf the rent of any accommodation is, or, but for a contract express or implied, would be payable for any accommodation and includes any person occupying the accommodation as a sub-tenant and also any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act; but shall not include any person against whom any order or decree for eviction has been made. The definition makes a person continuing in possession after the determination of his tenancy a tenant unless a decree or order for eviction has been made against him, thus, putting him on par with a person whose contractual tenancy must, therefore, be the same unless any provision of the Act conveyed a contrary intention. That under this Act such a tenant retains an interest in the premises, not merely a personal right of occupation, will also appear from Section 14 which contains provisions restricting the tenant's power of subletting. Section 14 is in these terms:--

14. Restrictions on sub-letting.--(1) No tenant shall, without the previous consent in writing of the landlord--

(a) sub-let the whole or any part of the accommodation held by him as a tenant; or

(b) transfer or assign his rights in the tenancy or in any part thereof.

(2) No landlord shall claim or receive the payment of any sum as premium or pegree or claim or receive any consideration whatsoever in cash or in kind for giving his consent to the sub-letting of the whole or any part of the accommodation held by the tenant.

There is nothing to suggest that this section does not apply to all tenants as defined in Section 2(i). A contractual tenant has an estate or interest in premises from which he carves out what he gives to the sub-tenant. Section 14 read with Section 2(i) makes it clear that the so-called statutory tenant has the right to sublet in common with a contractual tenant and this is because he also has an interest in the premises occupied by him. Considering the position of the sub-tenant of a statutory tenant in England, Lord Denning said in *Solomon v. Orwell*:--

What a statutory tenant sublets a part of the premises, he does not thereby confer any estate or interest on the sub-tenant. A statutory tenant has no estate or interest himself, and he cannot carve something out of nothing. The sub-tenant, like the statutory tenant, has only a personal right or privilege.

In England, the statutory tenant's right to sublet is derived from specific provisions of the Acts conceding this right to him; in the Act, we are concerned with in this appeal, the rights flow from his status as a tenant. This is the basic difference between the English Rent Restrictions Acts and the Act under consideration and similar other Indian statutes. In a Special Bench decision of the Calcutta High Court *Krishna Prosad Bose Vs. Sm. Sarajubala Dassi and Another*, Bachawat, J., considering the question whether a statutory tenant continuing in occupation by virtue of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 could sublet the premises let to him, said:--

The Rent Control and Tenancy Acts create a special world of their own. They speak of life after death. The statutory tenancy arises phoenix-like out of the ashes of the contractual tenancy. The contractual tenant may die but the statutory tenant may live long thereafter. The statutory tenant is an ex-tenant and yet he is a tenant.

The concept of statutory tenancy under the English Rent Acts and under the Indian statutes like the one we are concerned with in this appeal rests on different foundations. It must, therefore, be held that the predecessors-in-interest of the present respondents had a heritable interest in the premises and consequently the respondents had the right to prosecute the appeal in the High Court. Mr. Gupte's first submission thus fails.

12. The Supreme Court in the case of *Gian Devi Anand* (supra), has affirmed the view taken by it in *Damadilal*'s case (supra), and has held that heritable interest of the heirs of the statutory tenant would devolve on all the heirs of the "so-called statutory tenants" on his death and the heirs of such tenant in accordance with law stepped into his possession.

13. However, the Supreme Court, in the case of *H.C. Pandey Vs. G.C. Paul*, has held, the heirs succeed to the tenancy as joint tenants, and observed in Para 4 as under:--

4. It is now well-settled that on the death of the original tenant subject to any

provision to the contrary either negating or limiting the succession, the tenancy rights devolve on the heirs of the deceased tenant. The incidence of the tenancy are the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs. There is no division of the premises or of the rent payable therefor. That is the position as between the landlord and the heirs of the deceased tenants. In other words, the heirs succeed to the tenancy as joint tenants. In the present case, it appears that the respondent acted on behalf of the tenants, that he paid rent on behalf of all and he accepted notice also on behalf of all. In the circumstances, the notice served on the respondent was sufficient. It seems to us that the view taken in *Ramesh Chand Bose Vs. Gopeshwar Pd. Sharma*, is erroneous where the High Court lays down that the heirs of the deceased tenant succeed as tenants in common. In our opinion, the notice u/s 106 of the Transfer of Property Act served by the appellant on the respondent is a valid notice and, therefore, the suit must succeed.

14. The Supreme Court in the case of *Textile Association (India) Bombay Unit (supra)*, on the facts and circumstances stated therein, took the view that the ex parte decree obtained against the mother and brother was not binding against the respondent therein.

15. The Supreme Court in the case of *Pushpa Rani and others (supra)*, in a case where objection raised by other legal representatives of original tenant was dismissed, has held that after the death of original tenant (Chaman Lal), it was Sunil Kumar alone who continued in occupation of, and was carrying on the business in the premises and that in the circumstances of the case the other heirs must be held to have surrendered their rights to tenancy and affirmed the decree passed in favour of Sunil Kumar, i.e., one of the legal heirs of Chaman Lal.

16. It has been observed by the Supreme Court in the case of *Kanji Manji Vs. The Trustees of The Port of Bombay*, that once it is held that the tenancy was joint, a notice to one of the joint tenants was sufficient and the suit for the same reasons was also good. The Single Bench of the High Court of Madhya Pradesh, in the case of *Kanhaiyalal Vs. Shri Ram Singh*, placing its reliance upon the judgment of Supreme Court in *Damadilal's case (supra)* and *Kanji Manji's case (supra)*, has observed that after the death of original tenant, his legal representatives would become joint tenants and the eviction suit filed against anyone of them is maintainable.

17. The Supreme Court in the case of *Ashok Chintaman Juker and Others Vs. Kishore Pandurang Mantri and Another*, affirmed the view taken by it in *Kanji Manji's case (supra)*, *H. C. Pandey 's case (supra)*, and considering the view taken in the case of *Textile Association (India) Bombay Unit's case (supra)* and has held, in case of joint tenancy, notice on any one of the tenants is valid and a suit impleading one of them as a defendant is maintainable.

18. Reverting to the facts of the present case, indisputably, after the death of Roopchand Jain, the original tenant, the tenancy rights would devolve on his

legal heirs, i.e., 4 sons. Therefore, all his 4 sons would become joint tenants of the suit premises and the appellant alone would not be a tenant. However, in the instant case, admittedly, the rent was being paid by the appellant in the name of his late father-Roopchand Jain. This fact reveals that the rent was being paid by him on behalf of all the legal representatives of deceased-Roopchand Jain. It is also not in dispute that appellant alone was in occupation of the tenanted premises and was doing business in the name and style of Prakash Vastra Bhandar. The documents available on record, i.e., proceedings initiated by the appellant before the Rent Controlling Authority as well as before the Civil Court go to show that he has not denied that he was not the tenant of the suit premises. Therefore, in the light of above judgments of the Supreme Court, at the most, the appellant would be one of the joint tenants and the suit filed against him, without impleading other legal representatives of deceased-Roopchand Jain by the landlord, was well maintainable and it cannot be said that his brothers were necessary parties in the suit and without impleading them as co-defendant suit is liable to be dismissed or such decree is not binding upon them. The substantial question of law framed is answered accordingly.

19. For the reasons mentioned hereinabove, as the decree passed against the appellant is not bad, I do not find any reason to interfere in the decree passed by both the Courts below. Therefore, the appeal deserves to be and is hereby dismissed.

20. No order as to costs. A decree be drawn accordingly.