

Tirveni Devi and others v. Babu Lal and another (I. S. Tiwana, J.)

building or rented land or any class of buildings or rented lands.”

The buildings or rented lands located within the notified area of S.A.S. Nagar apparently from a class by themselves as compared to buildings and rented lands located in all other urban areas to which the Act is applicable. Similarly the argument that the exemption of the buildings and the rented lands situated in this urban area from the provisions of the Act when no such exemption exists in the case of the buildings and rented lands located in the adjoining town of Chandigarh, *per se* amounts to arbitrariness on the part of the Government, deserves to be rejected outright. The Punjab Government obviously has no jurisdiction over the areas forming part of the Union Territory of Chandigarh and thus the action or non-action of the Union Territory authorities cannot possibly render any of its action as arbitrary.

(3) Thus we dismiss this petition *in limine* with no order as to costs.

H.S.B.

Before I. S. Tiwana, J.

TIRVENI DEVI AND OTHERS,—*Petitioners.*

versus

BABU LAL AND ANOTHER,—*Respondents.*

Civil Revision No. 3452 of 1982.

March 1, 1985.

Code of Civil Procedure (V of 1908)—Order 22 Rule 4—Haryana Urban (Control of Rent & Eviction) Act (XI of 1973)—Sections 2 and 15 (2)—Order of eviction passed against statutory tenant on the ground of sub-letting premises—Tenant dying after passing of such order—Legal representatives of the deceased tenant filing appeal before the appellate authority—Right of inheritance concededly not available to the legal representatives—Appeal by such legal representatives—Whether maintainable—Sub-tenant of the deceased tenant—Whether has a locus standi to maintain a separate appeal.

Held that the analysis of the various provisions of Order 22 of the Code of Civil Procedure, 1908 reveals that the order deals with the creation, assignment or devolution of interest during the

pendency of suits and such creation, assignment or devolution may be brought about by the death of a party. If the death of a party occurs during the pendency of a suit and the right to sue does not survive, the death obviously puts an end to the suit. If, on the other hand, it is a suit in which the right to sue survives, the death will not put an end to the suit. It is in the latter type of suits that the question would arise—(i) what is the procedure to be followed in such suits and (ii) what are the consequences of not following that procedure? The answers to these questions will essentially depend upon (i) who is the party that died and (ii) to whom and against whom the right to sue or the right to seek relief survives? It is thus patent that since the death of the tenant no proceedings were pending against him, there was no question of his legal representatives being impleaded or brought on record. The legal representatives could maintain the appeal in term of Section 15(2) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 only if they could show themselves to the persons aggrieved by the order of the Rent Controller. The persons aggrieved being only those whose legal right has been infringed, the said legal representatives could maintain the appeal if it could be shown that they had a legal right in the tenancy in question and that stood violated in any manner by the order of the Rent Controller. Concededly the legal representatives had no such right to inherit the tenancy under section 2 and as such they could not be styled as persons aggrieved. The appeal filed by the said legal representatives would, therefore, not be maintainable.

(Para 6).

Held, that the sub-tenant under the deceased statutory tenant was ordered to be evicted by the Rent Controller. In the face of this finding it cannot be by any stretch of imagination held that a sub-tenant is not a person aggrieved by the order of the Rent Controller. As such the said sub-tenant has the *locus standi* to file the appeal against the order of the Rent Controller under the provisions of Section 15(2) of the Act.

(Para 7).

Petition u/s 15(5) of the Haryana Urban Rent Control of Rent and Eviction Act for revision of the order of Sh. I. P. Vasishth, Appellate Authority. Narnaul dated the 17th December, 1982, affirming that of Shri M. S. Saini, H.C.S., Rent Controller, Narnaul, dated 23rd December, 1981, ordering the eviction of the respondents from the premises in question but granting them three months time to vacate the same.

Ashok Bhan, Sr. Advocate with R. K. Garg, Advocate for the Petitioner.

N. C. Jain, Sr. Advocate with S. S. Jain, Advocate for respondent No. 1.

Tirveni Devi and others v. Babu Lal and another (I. S. Tiwana, J.)

JUDGMENT

I. S. Tiwana, J.

(1) These two Civil Revision Petitions Nos. 3452 of 1982 and 189 of 1983 are directed against the same judgment of the Appellate Authority under the Haryana Urban (Control of Rent & Eviction) Act, 1973 (for short, the Act) and are thus being disposed of through this common order. The following undisputed facts furnish the backdrop of the case.

(2) Babu Lal respondent in both the petitions brought an ejection petition under section 13 of the East Punjab Urban Rent Restriction Act, 1949, on December 26, 1972 against Chatur Bhuj, the predecessor-in-interest of the petitioners in C.R.P. No. 3452 and Siri Narain petitioner in the other petition *inter alia* on the grounds that Chatur Bhuj was a statutory tenant under him in the shop situated in Naya Bazar, Narnaul and was guilty of non-payment of rent and subletting the said shop to Siri Narain petitioner. These respondents tendered the rent due on the first date of hearing before the Rent Controller and with regard to subletting, their common plea was that they were only working as partners in the demised premises. The Rent Controller accepted the plea of subletting as advanced by the landlord and ordered the ejection of the respondents on December 23, 1981. By the time this order was passed by the Rent Controller, the East Punjab Urban Rent Restriction Act stood repealed by the Act which came into force with effect from April 27, 1973. Chatur Bhuj in whose favour the premises has been let out,—*vide* rent note Exhibit R.W. 6/1, dated 11th Asadh, 2006 Bk. (June 24, 1949) for a period of eleven months only, died on April 27, 1982, i.e., about four months after the order of ejection was passed against him. The present petitioners in C.R. No. 3452 who were his legal heirs filed, along with Siri Narain petitioner, an appeal before the Appellate Authority on September 15, 1982.

(3) The respondent landlord Babu Lal on putting in appearance before the said authority took the plea by way of preliminary objection that Chatur Bhuj, the statutory tenant in the demised premises admittedly a non-residential building, [having died prior to the filing of the appeal, had left no heritable interest in favour of the petitioners in C.R. No. 3452 and thus they could not maintain that appeal. Similarly qua Siri Narain his objection was that on

his own showing he was working in the demised premises as a partner with Chatur Bhuj and with the latter's death, the alleged partnership too came to an automatic end and thus he too could not maintain the appeal against the order of the Rent Controller. These pleas of Babu Lal respondent have been accepted by the Appellate Authority,—*vide* judgment which is now the subject-matter of these two petitions.

(4) In C.R. No. 3452, the solitary submission of Mr. Ashok Bhan, learned Senior Advocate for the petitioners, is that the Appellate Authority has gone wrong in going into the question of heritability of the interest of a statutory tenant in a non-residential property at this stage and the only course which could possibly and legally be adopted by the said authority was to treat the petitioners as legal representatives of Chatur Bhuj deceased and allow them to maintain their appeal. According to the learned counsel, it was only thereafter that the Appellate Authority could go into the question of inherited rights of the petitioners and could examine the question of maintainability of the appeal. He, however, concedes that in view of the definition of 'tenant' in section 2(h) of the Act and the judgments of this Court, i.e., *Sarwan Kumar v. Pyare Lal*, (1) and *Daljit Singh v. Gurmukh Dass*, (2), no right of inheritance was available to the petitioners *qua* the demised premises.

(5) For his above noted stand, the learned counsel relies, as was the case before the Appellate Authority also, on two judgments of this Court, i.e. *Kishan Kumar v. Baldev Singh and others*, (3) and *Hari Chand and another v. Banwari Dal and another*, (4) holding that the legal representatives of a statutory tenant are not brought on record as statutory tenants but as legal representatives of the deceased statutory tenant because the right of the landlord to proceed with the appeal with a view to obtain possession of the demised premises from the deceased statutory tenant survives under Order 22, rule 4, read with rule 11 of the Code of Civil Procedure.

(6) There is no dispute with the legal proposition enunciated in these judgments which pertain to cases where the statutory

(1) 1979(1) Rent Control Journal 3.

(2) A.I.R. 1981 Punjab & Haryana 394.

(3) (1974)76 P.L.R. 468.

(4) 1982(1) R.C.J. 159.

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tenants had died during the pendency of appeals against them by the landlords. The factual position in the case in hand is entirely different. Here the statutory tenant had admittedly died after the order of ejection had been passed against him by the Rent Controller and before his legal heirs, i.e., the present petitioners, preferred an appeal against that order before the Appellate Authority. Thus factually at the time of the death of Chatur Bhuj, the statutory tenant, no proceedings were pending against him. The analysis of the various provisions of Order 22 of the Code of Civil Procedure reveals that the order deals with the creation, assignment or devolution of interest during the pendency of suits, and such creation, assignment or devolution may be brought about by:—

- (i) the death of a party (Rule 1 to 6);
- (ii) his marriage (Rule 7);
- (iii) his insolvency (Rule 8); or
- (iv) other circumstances, such as transfer inter vivos, etc. (Rule 10).

If the death of a party has occurred during the pendency of a suit and the right to sue does not survive, the death obviously puts an end to the suit. If on the other hand it is a suit in which the right to sue survives, the death will not put an end to the suit. It is in the latter type of suits in which the death of a party does not bring the proceedings to an end that the questions would arise—(i) what is the procedure to be followed in such suits and (ii) what are the consequences of not following that procedure? The answers to these questions will essentially depend upon (i) who is the party that died and (ii) to whom and against whom the right to sue or the right to seek relief, survives? Thus the applicability of the provisions of this Order presupposes the pendency of a suit or a civil proceeding. In this view of mine I find support from *Risal Singh and another v. Chandgi and others*, (5) *Venkat Narsimhan Reddy v. Konda Reddy (deceased) and others*, (6) and *Joginder Singh v. Krishan Lal*, (7). It is thus patent that since at the death of Chatur

(5) A.I.R. 1939 Lahore 34.

(6) A.I.R. 1961 Hyderabad 55.

(7) A.I.R. 1977 Punjab & Haryana 180.

Bhuj no proceedings were pending against him, there was no question of the petitioners being impleaded or brought on record as his legal representatives. They could maintain that appeal in terms of section 15(2) of the Act only if they could show themselves to be the persons aggrieved by the order of the Rent Controller. The person aggrieved being only one whose legal right has been infringed, they could maintain the appeal if they could show that they had a legal right in the tenancy in question and that stood violated in any manner by the order of the Rent Controller. Concededly they had no such right to inherit and could not thus be styled as 'persons aggrieved'. Therefore, their challenge to the order of the Appellate Authority is futile.

(7) Mr. Ashok Bhan, however, appears to be right in submitting that Siri Narain petitioner in C.R. No. 189 could not successfully be non-suited right at the threshold. As already pointed out he was held to be a sub-tenant under Chatur Bhuj, the deceased statutory tenant and was ordered to be evicted by the Rent Controller. In the face of this finding he could not by any stretch of imagination be held to be a person not aggrieved by that order of the Rent Controller. His *locus standi* to file the appeal was well-guaranteed by the provisions of section 15(2) of the Act. The mere fact that the principal party (Chatur Bhuj) against whom an order of ejectment had been passed had not chosen to file an appeal—having died—could not render that order binding on the subsidiary party (Siri Narain) and the latter could not possibly be deprived of his own right to file an appeal against the order (*See Karam Singh Sobti and another v. Sri Pratap Chand and another*) (8). Thus for judging the maintainability of the appeal preferred by Siri Narain, the Appellate Authority could not possibly look into the plea raised by him or Chatur Bhuj deceased. All that was to be seen by the said authority at that stage was the finding recorded and the relief granted against him. In case the approach and the conclusion of the Appellate Authority that there was a partnership between Siri Narain and Chatur Bhuj and they were carrying on their business in the demised premises only as partners and not as tenant or sub-tenant as pleaded by the landlord Babu Lal, then where was the jurisdiction with the Rent Controller or the Appellate Authority to pass an order of ejectment under the provisions of the Act. Thus I find it difficult to sustain the order of the Appellate Authority dismissing the appeal of Siri Narain as non-maintainable.

(8) A.I.R. 1964 S.C. 1305.

Sudarsh Kumar Ahuja v. Shri R. P. Joshi and another
(J. V. Gupta, J.)

(8) In the light of the discussion above, while C.R. No. 3452 deserves to be dismissed, the other one preferred by Siri Narain, i.e. No. 189 has to be allowed. I order accordingly but with no order as to costs. Siri Narain's case is sent back to the Appellate Authority, Narnaul, for decision afresh on merits. The parties through their counsel are directed to appear before the said authority on April 8, 1985.

H.S.B.

Before J. V. Gupta, J.

SUDARSH KUMAR AHUJA,—*Petitioner.*

versus

R. P. JOSHI AND ANOTHER,—*Respondents.*

Civil Revision No. 2781 of 1984.

March 15, 1985.

Code of Civil Procedure (V of 1908)—Section 115—Order 1 Rule 10 and Order 6 Rule 17—Application for permission to amend plaint to implead another party refused—Court by same order rejecting plaint—Revision against said composite order—Whether maintainable.

Held, that the rejection of the plaint amounts to a decree and section 115(2) of the Code of Civil Procedure, 1908 provides that the High Court shall not under the said section, vary or reverse any decree or order against which an appeal lies either to the High Court or any other court subordinate thereto. In the impugned composite order the prayer for amendment under Order 6 Rule 17 and Order 1 Rule 10 has also been rejected but it would not make any difference if an order rejecting the application for seeking amendment of the plaint was decided by a separate order and then the plaint was rejected by another order. In that situation also since the plaint would have been rejected, the plaintiff could file an appeal only against the said order and in that appeal plaintiff could challenge the order declining the prayer for amendment of the plaint. As such the plaint itself has been rejected by the impugned order by the trial Court which is admittedly an appealable one the only remedy open to the plaintiff is to file an appeal against the said