

Balkesh and another v. Shmt. Shanti Devi and etc. (Koshal, J).

(Annexure 'C' to the petition). The Registrar, who appears to have contested this application without any just cause, shall pay the costs of the company. Formal order shall be drawn in accordance with law.

N. K. S.

REVISIONAL CIVIL

Before A. D. Koshal, J.

BALKESH AND ANOTHER,—*Petitioners.*

versus

SHMT. SHANTI DEVI AND OTHERS,—*Respondents.*

Civil Revision No. 707 of 1971

August 26, 1971.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 13 and 15(5)—Order of ejectment passed against a statutory tenant—Appeal preferred against the order—Tenant dying during the pendency of the appeal—Legal Representatives of such tenant—Whether can continue the appeal.

Held, that a decree for money obtained by or against a person on the basis of a remedy which is personal to him becomes a part of estate and would, therefore, be executable by or against his legal representatives. But the right to remain in occupation of certain premises as a statutory tenant is personal to that tenant and if his eviction has been ordered by a decree, that decree cannot be regarded as one which can be executed against the legal representatives or which they have a right to challenge. The heirs of the deceased tenant cannot succeed to the statutory tenancy which in its very nature dies with the tenant. Hence the legal representatives of a deceased statutory tenant against whom an order of ejectment has been passed, cannot continue the appeal preferred by him before his death against the order of ejectment. (Para 5)

Petition under Section 15(5) of Act III of 1949, for revision of the order of Shri Aftab Singh, IInd Additional, District Judge, Ludhiana, dated 14th May, 1971, allowing the legal representatives of Hira Nand to be brought on the record subject to all just exception.

A. L. Bahri, Advocate, for the petitioner.

Harbhagwan Singh, Advocate, for the respondents.

JUDGMENT

KOSHAL, J.—(1) The facts giving rise to this petition under section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Act) are these. The petitioners own a building situated within the municipal limits of Ludhiana City which was in the occupation of one Hira Nand as a tenant. On an application made under section 13 of the Act by them the Controller ordered eviction of Hira Nand on the 17th of February, 1967. Against the order of the Controller Hira Nand instituted an appeal before the hearing of which he presented an application to the Appellate Authority seeking permission to amend his written statement so as to introduce therein an additional plea to the effect that the proceedings for his ejection were incompetent for the reason that no notice under section 106 of the Transfer of Property Act had been served on him. That application was dismissed and Hira Nand came up in revision to this Court against the dismissal thereof. Before the matter was heard on the revisional side Hira Nand died and the present respondents were brought on the record as his legal representatives. Thereafter their petition for revision of the order of the Appellate Authority refusing the amendment of the written statement was dismissed by Mehar Singh, C.J., on the 17th of April, 1970, with a finding that ever since 1947 the tenancy held by Hira Nand was not a contractual but a statutory tenancy to which the provision of section 106 of the Transfer of Property Act had no application. The proceedings in the appeal were then continued before the Appellate Authority who overruled an objection taken by the petitioners that the appeal had abated inasmuch as the right to appeal had not survived and no legal representatives of Hira Nand could be substituted in his place. Aggrieved by the order of the Appellate Authority allowing the respondents to be substituted as appellants in place of Hira Nand the petitioners have filed the present petition.

(2) The case of the petitioners appears to be unassailable. The decision given by Mehar Singh, C.J., on the 17th of April, 1970, is binding on the parties so that the tenancy in dispute must be held to be a statutory tenancy. And if that be so, the heirs of Hira Nand cannot succeed to the tenancy which in its very nature is not heritable but dies with the tenant. The tenancy having come to an end once for all with Hira Nand's death, the building in dispute must revert to the landlord because no person such as may have a right to contest the ejection order by the Controller is now alive; and

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merely because the respondents are heirs to the estate of Hira Nand, they cannot claim to be substituted for him in the appeal.

(3) In coming to a contrary conclusion the learned Appellate Authority relied upon the following observations of Edge, C.J., in *Muhammad Husain and others v. Khushalo* (1), cited with approval in *Gopal Ganesh Abhyankar v. Ramchandra Sadashiv Sahasrabudhe* (2).

“I have always understood the law to be that, in those cases in which an action would abate upon the death of the plaintiff before judgment, the action would not abate if final judgment had been obtained before the death of the plaintiff.”

and also on the view expressed by Gyanendra Kumar, J. as a member of a Full Bench of the Allahabad High Court in *Jagan Nath Prasad and others v. Shmt. Chandra Wati and another* (3). In the Bombay authority the plaintiff had sued the defendant for defamation. The trial Court dismissed the suit but on appeal the District Judge passed a decree for damages awarding the plaintiff Rs. 99.15 and costs. The plaintiff executed the decree and recovered the amount. Subsequently the defendant filed a second appeal to the High Court but died during its pendency. His son was substituted for him as appellant. The appeal came up for hearing before a Division Bench consisting of Candy and Fulton, J.J., amongst whom there was a difference of opinion, Candy, J., being of the view that the appeal had abated and Fulton, J., holding that it had not. The case was referred to Crowe, J., who agreed with Fulton, J., and in doing so, observed :

“In a suit to recover damages on account of libel, the cause of action arises out of the tort committed against the person. Where, however, a decree has been passed and damages awarded, some pecuniary damage is inflicted thereby on the personal estate and it is to obtain relief from this that the appeal is brought.”

(1) I.L.R. 9 All. 131.

(2) I.L.R. 26 Bom. 597.

(3) 1969 A.I.R. C.J. 1054.

It was in this context that Crowe, J., referred to the above quoted observations of Edge, C.J., in *Muhammad Husain and others v. Khushalo* (1), the facts of which may be noted. The plaintiff there sued for a share of certain ancestral property. The Court of first instance dismissed the suit. The District Judge, on appeal, reversed the decree and awarded possession of the share claimed. The defendants appealed to the High Court and pending their appeal the plaintiff died. His widow was made respondent in his place but the appellants contended that the right to sue did not survive. On reference to a Full Bench it was held that the right was not a personal one and the right to sue survived to the plaintiff's legal representative. It was in these premises that Edge, C.J., made his above quoted observations. The Full Bench consisted of five Judges, of whom Oldfield, J., said :

"I concur. I think the answer to this reference should be that the right to sue in this case is not a personal right only, but one which would survive to the legal representative of the plaintiff."

It will be seen that in *Muhammad Husain and others v. Khushalo* (1) as also in *Gopal Ganesh Abhyankar v. Ramchandra Sadashiv Sahasrabudhe* (2), although the right claimed by the plaintiff was a personal one to begin with, the decree in his favour changed the position inasmuch as it was a decree which had become part of his estate after his death. In the former the widow could not have brought a suit for the property there in dispute and if her husband had died before obtaining a decree, she could not have been substituted as his legal representative, she herself having no right to claim the property; but once her husband obtained a decree of his share thereof, the decree became part of his estate and would after his death be executable by his heirs so that if his opponents filed an appeal, his heirs would have the right to be substituted as his legal representatives and to show to the Court of appeal that the decree was not liable to be set aside. Similar is the case of plaintiff in *Gopal Ganesh Abhyankar v. Ramchandra Sadashiv Sahasrabudhe* (2). If he had died before judgment, the cause would have died with him. As, however, he had obtained a decree before his death, the decree became a decree for money simpliciter and, therefore, part of his estate and executable by those representing the estate. That, however, is certainly not the case with an order for ejectment of a statutory tenant inasmuch as his right to occupy the premises remains a personal one throughout. If there is a decree in his

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favour that he is to continue in the premises, that decree dies with his death and if, on the other hand, there is an order of ejection against him, it is one which is executable against him alone. His legal representatives do not come in the picture. The tenancy having died with his death, he leaves behind nothing which his legal representatives can take advantage of. The ratio in the two authorities discussed above is, therefore, of no assistance to the case of respondents.

(4) For the view I have just expressed, support is available from the opinion of Trivedi, J., in *Jagan Nath Prasad and others v. Shmt. Chandra Wati and another* (3) (*supra*). In that case a decree was passed for ejection, arrears of rent and mesne profits against Behari Lal, a statutory tenant. Trivedi, J., held that the bar enacted in section 3 of the U.P. (Temporary) Control of Rent and Eviction Act, 1947, merely prohibited the filing of certain suits and not the determining of tenancies. He found that the tenancy of Behari Lal, the tenant in the case, was validly determined and that thereafter Behari Lal became a statutory tenant. He then observed :

“The right to remain in possession being personal, extinguished with the death of Behari Lal. As a matter of fact the decree for ejection itself is a dead decree. The right to remain in occupation of the accommodation being personal and having been extinguished with the death of Behari Lal, his heirs cannot in law be termed as persons affected or claiming under him and cannot challenge the dead decree even though it was a wrong decree and could have been successfully challenged by Behari Lal.”

Gyanendra Kumar, J., held a different view which he expressed thus :

“With the profoundest respect to my learned brother Trivedi, I cannot persuade myself to agree with the proposition that even though no suit, giving rise to the present appeal, could lie and the consequent decree was also illegal and wrong, yet the appellants could not challenge the same notwithstanding that they are liable at least for the money part of the decree and have a right to institute the present appeal. As indicated above, they can obviously challenge the money decree for arrears of rent and so-called damages for use and occupation on the ground

that there was no cause of action for such a suit. In these circumstances, there can be no question of maintaining the decree for ejection, when such a decree did not exist in the eye of law. A fortiori there also cannot be any question of such a decree exhausting itself on account of the death of Behari Lal, for before it could exhaust itself, it must have had a legal existence, which was totally wanting in this case."

Mukerjee, J., the third member of the Full Bench, pointed out that although section 3 *ibid* did enact a bar to certain suits, the suit actually filed against Behari Lal did not fall within its ambit and that, therefore, the decree passed against Behari Lal was not one that could be regarded as non-existent in the eye of law. He concluded that the decree had a valid legal existence and was binding on the parties concerned till it was set aside. However, he expressed no opinion on the point on which Gyanendra Kumar, J., had differed with Trivedi, J., namely, as to whether Behari Lal's legal representatives could be heard in opposition to the decree in so far as it directed his ejection. Nevertheless he concurred with Gyanendra Kumar, J., in the final order to be passed which was that the suit be dismissed as a whole.

(5) With the utmost respect to Gyanendra Kumar, J., I cannot subscribe to the view expressed by him. As already pointed out by me, a decree for money obtained by or against a person on the basis of a remedy which is personal to him becomes a part of his estate and would, therefore, be executable by or against his legal representatives. The right to remain in occupation of certain premises as a statutory tenant is, however, personal to that tenant and if his eviction has been ordered by a decree, that decree cannot be regarded as one which could be executed against the legal representatives or which they have a right to challenge. On this point I find myself in complete agreement with the observations of Trivedi, J., set out above.

(6) I conclude that the respondents had no right to be substituted for Hira Nand in the appeal as his legal representatives and that the appeal abates. Accordingly, I accept the petition and dismiss the appeal as having abated. The petitioners shall have their costs of the proceedings in this Court.

N.K.S.