

Sarup Chand and other *v.* Satish Kumar and others (J. V. Gupta, J.)

which supplies power or light to the public is or is not an 'establishment'. If Section 3 of the Establishment Act had not been there, then it would have involved the interpretation of the definitional clause in question to decide as to whether the expressions 'shop' 'establishment' or 'commercial establishment' as defined, would cover an undertaking like that of the petitioner. But by excluding such undertaking from the application of the provisions of this Act, the legislature impliedly ordains that although these may fall within the definition of 'shop' 'establishment' or 'commercial establishment', even then the provisions of the Act would not be applicable to the same.

(5) Section 3 of the Establishment Act in my opinion cannot be read to mean that the legislature had envisaged that these are not 'shop' or 'establishment' or 'commercial establishment'. In fact, it meant only this that the regulatory and other provisions of the Establishment Act shall not govern such 'shop', 'establishment' or 'commercial establishment' as are identified by Section 3 of the Establishment Act.

(6) For the reasons afore-mentioned I hold that the provisions of the Gratuity Act by virtue of the provisions of Section 1(3)(b) clearly applies to the petitioner-Board. In the light of the above, I hold that the impugned order is legal and there is no merit in this petition and the same is dismissed, but with no order as to costs.

N.K.S.

Before J. V. Gupta, J.

SARUP CHAND and others,—*Appellants.*

versus

SATISH KUMAR and others, *Respondents.*

Regular Second Appeal No. 1830 of 1974.

February 17, 1983.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13—Heirs of a statutory tenant living separately during his life time—Death of the statutory tenant—Such heirs—Whether could claim the right to occupy the demised premises after the death of the tenant only on the ground of being heirs.

Held, that once it is found as a fact that the heirs were living separately in different houses and were also carrying on their business separately, they were not entitled to remain in occupation of the demised premises, in dispute, after the death of the statutory tenant. It cannot be successfully argued that after the death of the statutory tenant, his legal heirs were entitled to remain in occupation of the premises, in dispute, as a matter of right, irrespective of the fact whether the said heirs were living separately from the statutory tenant during his life time or not. In all cases, whether they relate to a non-residential building or to a residential building, the persons who claim the right to occupy being the heirs of the statutory tenant have to be in occupation of the premises during the life time of the statutory tenant. As a matter of fact, when a statutory tenant dies, on his death, the persons who are ordinarily his heirs if already in occupation are entitled to continue to occupy the demised on the same terms and conditions and their occupation of the premises after the death of the statutory tenant would not be deemed to be that of a trespasser. Thus, where the heirs were never in occupation of the demised premises during the life time of the statutory tenant and were residing separately, they cannot claim the right of occupation as tenants being the legal heirs of the statutory tenant, simply on the ground that the statutory tenancy is heritable. (Paras 6 and 8).

Regular Second Appeal from the decree of the Court of the Additional District Judge, Bhatinda, dated the 15th day of October, 1974, modifying that of the Sub-Judge III Class, Bhatinda (A), dated the 28th February, 1974 (decreeing the suit of the plaintiff with proportionate costs in favour of the plaintiff against the defendants for possession of the disputed Chobaras and for recovery of Rs. 221 to the extent that the compensation at the rate of Rs. 15 per month shall be awarded to the land lord till the delivery of the possession of the said premises to him and leaving the parties to bear their own costs.

H. L. Sarin with M. M. S. Bedi & M. L. Sarin, Advocates.

J. R. Mittal & Pawan Bansal Advocates, for the Respondent.

JUDGMENT

J. V. Gputa, J.

(1) This is defendant's second appeal against whom the suit for possession of the property, in dispute has been decreed by both the Courts below.

2. Satish Kumar, plaintiff-respondents, brought the suit on the allegations that he was the owner of the *chaubaras*, in dispute, which he had given on yearly rent through the rent-deed to Nanda Mal on April 1, 1966, at the rate of Rs. 144 per year, with the stipulation to pay the yearly rent in advance.

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The possession of the demised premises remained with the said Nanda Mal after the expiry of one year and, thus, he became the statutory tenant thereafter and paid rent till September 30, 1968. He died in June, 1968. Thereafter, the defendants, who are his children except his widow Shrimati Kasturi Devi, defendent, continued to be in occupation of the *chaubaras*, and did not vacate the same despite the repeated requests made by the plaintiff. Hence the necessity of filing the present suit on the ground that the statutory tenancy being not heritable, came to an end with the death of Nanda Mal. A sum of Rs. 442 being the amount for the use and occupation of the premises at the rate of Rs. 30 per month from October 1, 1968 to December 23, 1969, i.e. till the filing of the suit was also claimed. The suit was resisted by the defendants *inter alia* on the grounds that they formed a joint Hindu family with Nanda Mal, deceased, the premises, in dispute, were taken on rent for the benefit of the Hindu undivided family and, therefore, on the death of Nanda Mal, the tenancy was heritable. The trial Court found that Nanda Mal had executed the rent note on April 1, 1966, in favour of the plaintiff and that the tenancy came to an end upon the death of the former being a statutory tenant. It was also held that the defendants did not constitute a joint Hindu family with the aforesaid Nanda Mal and that they were not entitled to succeed to his tenancy after his death. For the use and occupation of the premises after his death, compensation was assessed at Rs. 221 at the rate of Rs. 15 per month. As a result, the plaintiff's suit was decreed to that extent. Two separate appeals were filed against the same by the defendants as well as by the plaintiff. The appeal filed on behalf of the defendants was dismissed *in toto* whereas the appeal filed on behalf of the plaintiff was dismissed subject to the modification that he was entitled to the compensation for the use and occupation of the premises at the rate of Rs. 15 per month till the delivery of possession of the demised premises to him. Aggrieved against the same, the defendants have come up in second appeal to this Court.

3. The lower appellate Court on the appreciation of the entire evidence has given a firm finding that the defendants-appellants who claimed that they formed a joint Hindu family with Nanda Mal, deceased, had no assets and all its male members continued their business separately and resided in different houses. The premises were taken on rent by Nanda Mal, deceased, in his personal capacity. This being a finding of fact, has not been challenged by the defendants-appellants in this appeal.

4. The only contention raised on behalf of the appellants is that the statutory tenancy as such was heritable and, therefore, the defendants were entitled to remain in occupation of the premises, in dispute, after the death of the statutory tenant. In support of his contention, the learned counsel placed reliance on *Damadilal v. Parashram* (1), *Mohan Lal v. Ram Dass* (2), *Parkash Chand v. Kishan Chand* (3), the Division Bench decision of this Court in *Mohan Lal v. Ram Dass* (4), and *Manmohan Nath v. Shrimati Kesra Devi* (5), Reference was also made to *Lekh Raj v. Bhagwat Sarup* (6) which was referred to a larger Bench, but has not yet been finally disposed of.

5. I have heard the learned counsel for the parties and have also gone through the case law cited at the bar.

6. After giving my thoughtful consideration to the whole matter I am of the considered opinion that once it is found as a fact that the appellant were living separately in different houses and were also carrying on their business separately, they were not entitled to remain in occupation of the premises, in dispute, after the death of the statutory tenant Nanda Mal. Though in *Damadilal's case* (supra), it was held that the statutory tenancy was heritable, yet in paragraph 7 of the judgment in *Vithal v. Shrimati Shamrao* (7) the Supreme Court made it clear that in *Damadilal's case* (supra), it did not lay down a wide proposition that every tenancy was heritable. Therefore, it could not be successfully argued that after the death of the statutory tenant, his legal heirs were entitled to remain in occupation of the premises, in dispute, as a matter of right, irrespective of the fact whether the said heirs were living separately from the statutory tenant during his life time or not. All the authorities referred to and relied upon by the learned counsel for the appellants nowhere lay down such a proposition. In all those cases, whether they relate to a shop, i. e. a non-residential building, or to residential building, the persons who claimed the right to occupy being the heirs of

(1) AIR 1976 S. C. 2229.

(2) 1977(1) Rent Control Journal 756.

(3) 1982(1) Rent Control Journal 729.

(4) 1980(1) R. C. J. 607.

(5) 1980 P. L. R. 215.

(6) RSA 1215/72.

(7) AIR 1979 S. C. 1121.

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the statutory tenant, were in occupation of the premises during the life time of the statutory tenant. As a matter of fact, the question decided in all those cases was that when a statutory tenant dies, on his death, the persons who are ordinarily his heirs if already in occupation are entitled to continue to occupy the demised premises on the same terms and conditions and that their occupation of the premises would not be deemed to be that of a trespasser. It was only to that limited extent that it was held that a statutory tenancy as such was heritable. The present is a case of the Punjab State to which the provisions of the East Punjab Urban Rent Restriction Act (hereinafter called the Act), are applicable. Though under the Haryana Urban (Control of Rent and Eviction) Act, the definition of the term "tenant", *inter alia* means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of his tenancy and in the event of such person's death, such of his heirs as are mentioned in the Schedule appended thereto and who are ordinarily residing with him at the time of his death, but does not include a person placed in occupation of a building or rented land by its tenant, except with the written consent of the landlord, but the definition of the term "tenant" under the former Act, does not so provide, yet I am afraid, it could not be successfully argued that a person who is a legal heir of the statutory tenant is entitled to occupy the rented premises irrespective of the fact whether he was or was not residing with him in the said premises during the life time of the statutory tenant. No case has been brought to the notice of this Court wherein it has been held that a person is entitled to claim the statutory tenancy rights to occupy the premises only on the ground that he was the heir of the deceased statutory tenant in spite of the fact that he was not in occupation of the premises during his life time or residing with him at the time of his death.

7. In *Manmohan Nath's case* (supra), the definition of the term "tenant" under the Act, was discussed and it was observed that it was abundantly clear that the said definition includes a tenant or a person continuing in possession even after the termination of the tenancy in his favour. Even in *Damadilal's case* (supra), wherein the definition of the term "tenant" under section 2(i) of the Madhya Pradesh Accommodation Control Act, 1961, was under consideration, it was observed:—

"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. The incidents of such a tenancy and a contractual tenancy must therefore be the same unless any provision of the Act conveys a contrary intention."

8. The Division Bench decision of this Court in Mohan Lal's case (supra), related to a shop i.e. a non-residential building wherein the case of the plaintiff, in the alternative, was that even if Karam Chand, the allottee, was held to be a statutory tenant, the tenancy came to an end on his death and the defendants were in illegal possession thereafter. In the written statement, it was specifically pleaded that the defendants Nos. 4 and 5 after the death of the statutory tenant were running the business in the shop, along with the deceased during his life time, and after his death, a new partnership between the old partners and the heirs of Karam Chand, deceased, was brought into existence which was running the business in the shop, in dispute, at the time of the filing of the suit. It was in these circumstances held by the Division Bench that the statutory tenancy having been held to be heritable, the said respondents continued as tenants till the filing of the suit and as such were liable to pay rent and were not liable to be ejected. As observed earlier, the present case is clearly distinguishable on facts. After having been found as a fact by both the Courts below, which is not being challenged in this appeal, that the defendants-appellants were never in occupation of the premises, in dispute, during the life of the statutory tenant Nanda Mal and were residing separately, they cannot claim the right of occupation as tenants being the legal heirs of the statutory tenant Nanda Mal, simply on the ground that the statutory tenancy is heritable. Even in Regular Second Appeal No. 1215 of 1972, this question is not involved. The said case relates to a shop and not to a residential building and, therefore, has no bearing on the facts of the present case.

9. As a result of this discussion, I do not find any illegality or infirmity in the judgments of the two Courts below. Consequently, this appeal fails and is dismissed with costs.

N. K. S.