

Before S. S. Sodhi, J.

DALJIT KAUR,—Appellant.

versus

RUKMAN AND OTHERS,—Respondents.

Regular Second Appeal No. 1446 of 1982

July 11, 1988.

*East Punjab Urban Rent Restriction Act (III of 1949)—Statutory tenant—Right to bequeath tenancy rights by will—validity and extent of such right—Heir of such tenant not in possession of tenanted premises—Right of such heir to claim relief under the Rent Act.*

Held, that in dealing with the question of right of statutory tenant to transfer his tenancy right by will the relevant provisions of the East Punjab Urban Rent Restriction Act, 1949 have to be kept in view. It must be appreciated that a bequest of tenancy rights by a statutory tenant in favour of a stranger cannot but stand on a different footing than one to his legal heirs. Whereas in the former, it would be the thrusting of 'uncontemplated strangers' in the premises, in the latter it would be no more than the coming in of some, if not all, of those upon whom the legislature has conferred a right to succeed to such tenancy rights. It is also well settled that an interest that can be inherited can be bequeathed too. On principle, therefore, no exception can be taken to the entitlement of a statutory tenant to bequeath his tenancy rights by will to one or more of his legal heirs who would have succeeded to them had he died intestate.

(Para 11).

Held, that the Rent Acts operate on the concept of reciprocity namely the right to continue in possession and the corresponding liability for payment of rent. The fact that a statutory tenant had a heritable interest cannot be deemed to *ipso facto* fasten liability for payment of rent upon his legal heirs unless and until they are in possession of the premises. In other words with Daljit Kaur (an heir of the statutory tenant) never having been in possession, there could be no corresponding liability upon her for payment of rent. She cannot, therefore, be heard to rest her claim for relief here (for possession) on the provisions of the Rent Act. (Para 13)

*Regular Second Appeal from the decree of the Court of the 1st Additional District Judge, Gurdaspur, dated the 25th day of January, 1982, affirming that of the Sub-Judge 1st Class Gurdaspur, dated the 30th January, 1980, dismissing the suit of the plaintiff, with costs.*

R. K. Mahajan, Advocate, for the Appellant.

H. L. Sarin, Sr. Advocate, (Miss Jay Shree Thakur and Miss Ritu Bahri, Advocates with him), for Respondents 1 to 8.

## JUDGMENT

S. S. Sodhi, J.—

(1) The bone of contention here is a shop situated on the Grand Trunk Road, Gurdaspur. Jaimal Singh, its owner had let out this shop on rent to Bahadur Singh in 1945. The said Bahadur Singh continued in possession thereof till his death in 1973.

(2) Upon death of the tenant Bahadur Singh, Shrimati Rukman, widow of Jaimal Singh and his other legal heirs (Jaimal Singh having died earlier) filed a suit for possession of the shop which was decreed in their favour by the trial court on November 30, 1974. This decree was later upheld and affirmed in appeal by the Additional District Judge, Gurdaspur on October 17, 1975 though it was several years later, on August 5, 1982 that in execution thereof the legal heirs of Jaimal Singh eventually obtained possession of the shop.

(3) The tenant, Bahadur Singh had died leaving behind his widow, Kartar Kaur, three sons Harbhajan Singh, Prem Singh and Bhagwan Singh besides a daughter Daljit Kaur, the present appellant. This Daljit Kaur had not been impleaded as a party to the suit for possession of the shop which had been filed by the legal heirs of Jaimal Singh. Capitalising upon this, Daljit Kaur filed a suit on November 24, 1976 (from which the present appeal arises) seeking a declaration to the effect that the decrees of the trial court of November 30, 1974 and that of the appellate court of October 17, 1975 were void and illegal, with the consequential relief of injunction, to restrain possession of the shop being delivered under the said decrees. This consequential relief of injunction was later, by an amendment in the pleadings, allowed by this Court on November 24, 1983, substituted by that of possession of the shop, this amendment being necessitated by the delivery of possession of the shop, in the meanwhile, in execution of the decrees now under challenge.

(4) The trial court dismissed the suit of the plaintiff Daljit Kaur holding that she was not and indeed had never been in possession of the shop and thus not a necessary party to the previous suit for possession filed against the widow and sons of the tenant. Bahadur Singh and further that she (Daljit Kaur) had filed the present suit at the instance and for the benefit and interest of her brother Harbhajan Singh. These findings were later upheld and affirmed in appeal.

Daljit Kaur v. Rukman and others (S. S. Sodhi, J.)

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(5) In appeal here, two additional issues were framed in view of the fresh pleas raised in the pleadings by the amendments allowed, these issues being—

(10) Whether Bahadur Singh, father of the plaintiff, executed the Will dated January 12, 1965 in favour of his three sons ?

(11) If issue No. 10 is proved, whether the tenancy rights could not be disposed of by way of a Will ?

(6) The case was thereafter remitted to the trial court for affording an opportunity to the parties to adduce evidence on these issues and to submit its findings thereon to this Court.

(7) The trial court in its report of September 28, 1985 returned the finding that the plaintiff was an "absentee joint tenant and she had filed the present suit at the asking of her brothers Harbhajan Singh and Prem Singh" and further that as tenancy rights were heritable and thus devolved upon the heirs of the deceased tenant, they could be bequeathed by him to his heirs by will and that Bahadur Singh had executed a valid Will bequeathing his movable and immovable properties including the factory in the said shop to his sons and had specifically excluded his widow and daughter therefrom.

(8) In appeal here, it was sought to be contended by Mr. R. K. Mahajan, counsel for the appellant, Daljit Kaur that she not being a party to the earlier suit was not bound by the decrees passed therein and further that as tenancy rights were heritable and she being one of the legal heirs of the tenant, Bahadur Singh was, therefore, entitled to succeed to them along with her mother and brothers. In so far as the Will executed by Bahadur Singh was concerned, this was sought to be assailed on the ground that a statutory tenant was not competent to transfer his tenancy rights by Will.

(9) Tenancy rights of a statutory tenant are indeed heritable, as held by the Supreme Court in *Damadilal and others v. Parashram and others* (1). This was a case under the Madhya Pradesh Accommodation Control Act, 1961. The tenant having died during the pendency of the appeal before the High Court, the contention was raised that the right to prosecute the appeal no longer survived to his heirs. This was repelled by the Court holding that the concept of statutory tenancy under the English Rent Acts and the Indian

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(1) AIR 1976 S.C. 2229.

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Statute rested on different foundations and that tenants here had a heritable interest. The heirs of the tenant were thus held entitled to prosecute the appeal.

(10) To canvass the proposition that the tenant was not competent to transfer his tenancy rights by Will, reliance was sought to be placed upon the judgment of the Supreme Court in *Bhavarlal Labhchand Shah v. Kanaiyalal Nathalal Intawala* (2). This was a case under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 concerning the bequest of tenancy rights by the tenant to a person who was not a member of the tenant's family. It was held that a person occupying non-residential premises as a tenant after the contractual period is over, cannot bequeath his right to occupy the property as a tenant under a Will in favour of a legatee who is not a member of his family, carrying on business, trade or storage within the said premises at the time of his death. The wider proposition that a statutory tenancy, which is personal to the tenant, cannot be bequeathed at all under a Will in favour of any body was, however, left open.

(11) The competency of a statutory tenant to transfer his tenancy rights by Will is here a matter which directly arises in this case and cannot, therefore, be avoided. In dealing with this question, keeping in view the relevant provisions of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Rent Act), it must be appreciated that a bequest of tenancy rights by a statutory tenant in favour of a stranger cannot but stand on a different footing than one to his legal heirs. Whereas in the former, it would be the thrusting of 'uncontemplated strangers' in the premises, in the latter it would be no more than the coming in of some, if not all, of those upon whom the legislature has conferred a right to succeed to such tenancy rights. It is also well settled that an interest that can be inherited can be bequeathed too. On principle, therefore, no exception can be taken to the entitlement of a statutory tenant to bequeath his tenancy rights by Will to one or more of his legal heirs who would have succeeded to them had he died intestate.

(12) It follows, therefore, that when by his Will, Bahadur Singh bequeathed his movable and immovable properties exclusively to his sons, this bequest must also be taken to include his tenancy rights in the shop. This being so, the appellant Daljit Kaur was clearly not a necessary party to the earlier suit and cannot thus be heard to question the legality of the decrees passed therein.

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(2) AIR 1986 S.C. 600.

Parbhat Talkies and others v. State of Punjab and others  
(M. M. Punchhi, J.)

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(13) Further in the context of the fact that Daljit Kaur had never been in possession of the shop, the other relevant aspect to be kept in view is that Rent Acts operate on the concept of reciprocity namely the right to continue in possession and the corresponding liability for payment of rent. The fact that a statutory tenant had a heritable interest cannot be deemed to *ipso facto* fasten liability for payment of rent upon his legal heirs unless and until they are in possession of the premises. In other words with Daljit Kaur never having been in possession, there could be no corresponding liability upon her for payment of rent. She cannot, therefore, be heard to rest her claim for relief here on the provisions of the Rent Act. The claim of Daljit Kaur for the relief sought, thus has no legs to stand on. This is all the more so with the concurrent findings of the courts below that this suit had been filed by her at the instance and on behalf of her brothers who were the unsuccessful parties to the earlier suit.

(14) Such, thus being the circumstances here, the impugned findings, judgments and decrees of the courts below warrant no interference in appeal. This appeal is consequently hereby dismissed with costs throughout.

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S.C.K.

*Before M. M. Punchhi and Amarjeet Chaudhary, JJ.*

PARBHAT TALKIES AND OTHERS,—*Petitioners.*

*versus*

STATE OF PUNJAB AND OTHERS,—*Respondents.*

*Civil Writ Petition No. 6101 of 1987*

July 25, 1988.

*Constitution of India, 1950—Art. 14—Punjab Entertainment Duty Act (XVI of 1955)—S. 1A—Liability to pay duty—Different duties payable on entertainment provided by different methods—Separate classification of Cinema and Video—Such classification whether discriminatory.*

*Held.* that if two species of entertainment offered by two different methods, by two different means and magnitude, in different