

Kumar Jagdish Chandra Sinha vs Eileen K.Patricia D'Rozarie on 10 November, 1994

Equivalent citations: 1995 AIR 515, 1995 SCC (1) 164, AIR 1995 SUPREME COURT 515, 1995 (1) SCC 164, 1994 AIR SCW 4770, 1994 AIR SCW 4754, (1995) 49 ECC 18, 1995 SCFBRC 90, (1994) 74 ELT 769, (1994) 7 JT 496 (SC), 1994 (7) JT 512, 1994 (7) JT 496, (1994) 2 FAC 370

Author: M.K Mukherjee

Bench: M.K Mukherjee, S. Mohan

PETITIONER:

KUMAR JAGDISH CHANDRA SINHA

Vs.

RESPONDENT:

EILEEN K.PATRICIA D'ROZARIE

DATE OF JUDGMENT 10/11/1994

BENCH:

MUKHERJEE M.K. (J)

BENCH:

MUKHERJEE M.K. (J)

MOHAN, S. (J)

CITATION:

1995 AIR 515

1995 SCC (1) 164

JT 1994 (7) 512

1994 SCALE (4) 940

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by M.K. MUKHERJEE, J.- IA No. 2 of 1994 allowed.

2.At all material times one Mrs Sira Menan was a tenant under the appellants in respect of a flat in premises No. 23, Lindsay Street, Calcutta. After her death on 12-8-1970, the appellants filed the suit,

out of which the instant appeal arises, alleging that the respondent, claiming herself to be the daughter of the deceased, had entered into the flat on 16-8-1970 with her family and was residing therein since then. According to the appellants such claim of the respondent was a false one as Mrs Menan had all along lived in the flat alone and the respondent was never seen to visit her, much less live therein. By filing the suit the appellants, therefore, prayed for recovery of the flat on a declaration that the respondent was a rank trespasser and liable to be evicted there from.

3. In contesting the suit the respondent asserted that she was the daughter of the deceased tenant and had been living in the flat since the inception of the tenancy. Consequently, she claimed, that upon her mother's death she, as her sole heir, became a tenant under the appellants.

4. In the context of the respective stands of the parties and in view of the admitted fact that the tenancy of Mrs Menan was governed by the West Bengal Premises Tenancy Act, 1956 ('Act' for short) the two questions that fell for determination before the trial court were (i) whether the respondent was the daughter of the deceased tenant and, if so, (ii) whether she was entitled to inherit the tenancy. On consideration of the evidence adduced by the parties the trial court held that the respondent was not the daughter of the deceased and even if it was assumed that she was, she would not be a 'tenant' within the meaning of Section 2(h) of the Act as she was not ordinarily residing with her mother at the time of her death. Resultantly, the trial court granted the reliefs sought for by the appellants. In appeal by the respondent the High Court disagreed with both the findings of the trial court and dismissed the suit. Hence this appeal by special leave.

5. Having perused the evidence on record we are in complete agreement with the High Court that the trial court was not at all justified in holding that the respondent was not the daughter of the deceased tenant. Besides, the above finding of the High Court was not assailed by the appellants before us. The only question, therefore, that survives for our consideration in this appeal is whether the respondent, as daughter of the deceased tenant, can claim herself to be 'tenant' under Section 2(h) of the Act.

6. Dr Ghosh, the learned counsel appearing for the appellants submitted that from the definition of 'tenant' as appearing in Section 2(h) of the Act it would be patently clear that only those heirs of the tenant whether contractual or statutory who were ordinarily residing with him at the time of his death would only succeed as a tenant and not all the heirs. According to Dr Ghosh the words "in the event of such person's death" in Section 2(h) relate not only to persons whose tenancy subsists but also to those who are continuing in possession after the termination of the tenancy. Dr Ghosh contended that once Section 2(h) was so interpreted as it should be the appellant was bound to succeed for the finding of the High Court that the respondent was ordinarily residing with the erstwhile tenant at the time of her death was patently wrong and opposed to the evidence on record.

7. Both the above contentions of Dr Ghosh were resisted by Mr Mukherji, appearing on behalf of the respondent. According to Mr Mukherji, the words "such person" appearing in the phrase "in the event of such person's death" in Section 2(h) refer only to the person who is continuing in possession after the termination of his tenancy and do not and cannot refer also to a contractual tenant, for he has an estate or interest in the subject matter of the tenancy and heritability being an

incidence of the tenancy it will devolve upon all the heirs and will not be limited to only those heirs who were residing with him at the time of his death. Mr Mukherji lastly contended that even if Section 2(h) was interpreted in the manner suggested by Dr Ghosh, this Court would not be justified in disturbing the finding of the High Court that the respondent was ordinarily residing with her mother at the time of her death as the same was one of fact, based upon a proper appreciation and appraisal of evidence.

8. To appreciate the respective contentions of the learned counsel for the parties it will be necessary at this stage to first refer to Section 2(h) of the Act, as it stood prior to its amendment in 1965. It read as under:

" 'Tenant' means any person by whom or on whose account or behalf, the rent of any premises is, or but for a special contract would be, payable and also any person continuing in possession after the termination of the tenancy but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction." (emphasis supplied)

9. Under the above definition therefore there were only two classes of tenants, namely, person occupying any premises under a subsisting tenancy and person continuing in possession after termination of the tenancy. While the former is called a "contractual tenant" the latter is commonly called taking a cue from English Rent Acts a "statutory tenant". In *Anand Nivas (P) Ltd. v. Anandji Kalyanji Pedhil* the question of heritability of a "statutory tenancy" vis-a-vis "contractual tenancy" came up for consideration before this Court in the context of Section 14 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, as amended in 1959, which related to the right of a "statutory tenant", to sub-let the premises. The majority view of the Bench comprising three learned Judges was that a "statutory tenant" had no power of sub-letting. In expressing that view, Shah, J. (as he then was) speaking for the majority observed:

"A person remaining in occupation of the premises let to him after the determination of or expiry of the period of the tenancy is commonly, though in law not accurately, called a 'a statutory tenant'. Such a person is not a tenant at all; he has no estate or interest in the premises occupied by him. He has merely the protection of the statute in that he cannot be turned out so long as he pays the standard rent and permitted increases, if any, and performs the other conditions of the tenancy. His right to remain in possession after the determination of the contractual tenancy is personal; it is not capable of being transferred or assigned, and devolves on his death only in the manner provided by the statute. The right of a lessee from a landlord on the other hand is an estate or 1 AIR 1965 SC 414: (1964) 4 SCR 892 interest in the premises and in the absence of a contract to the contrary is transferable and the premises may be sub-let by him." (emphasis supplied)

10. Indisputably a contractual tenant has an estate or interest in the subject-matter of the tenancy and heritability is an incidence of such tenancy. In the absence of any provision in the Act to the contrary, all the heirs of such a tenant would therefore, on his death, step into his shoes. The same

could not however be said about the statutory tenant in view of the law laid down in Anand Nivas (P) Ltd.¹ as quoted above and the plain and unambiguous language of Section 2(h), as it then stood. In other words, the heirs of a statutory tenant had no right to the tenancy as such a right was personal and the Act did not make any provision regarding the manner in which such right was to devolve.

11. It appears that following Anand Nivas (P) Ltd. case¹ the Governor of West Bengal issued an Ordinance on 24-8-1965 amending, inter alia, Section 2(h) of the Act. After that amendment Section 2(h) reads as under:

" 'Tenant' means any person by whom or on whose account or behalf, the rent of any premises is, or but for a special contract would be, payable and includes any person continuing in possession after the termination of his tenancy or in the event of such person's death, such of his heirs as were ordinarily residing with him at the time of his death, but shall not include any person against whom any decree or order for eviction has been made by a court of competent jurisdiction."

(emphasis supplied)

12. The purpose behind such amendment (besides the other amendments) can be gathered from the Statement of Objects and Reasons accompanying the Bill which when enacted became the West Bengal Premises Tenancy (Amendment) Act, 1965, and replaced the Ordinance. The Statement of Objects and Reasons, to the extent it is relevant for our purposes, reads as follows:

"The West Bengal Premises Tenancy Act, 1956 (West Bengal Act XII of 1956) was amended by the West Bengal Premises Tenancy (Amendment) Ordinance, 1965 (West Bengal Ordinance VI of 1965) for the following purposes, namely:

(a) * * *

(b) giving right to the heirs of a statutory tenant to retain possession of premises after his death;

(c)-(f) * * *

2. It is necessary to enact the provisions of the Ordinance.

3. The Bill has been framed with the above object in view."

13. It is undoubtedly true that the Statement of Objects and Reasons accompanying a legislative bill cannot be used to ascertain the true meaning and effect of the substantive provisions of the legislation, but it can certainly be pressed into service for the limited purpose of understanding the background, the antecedent state of affairs and the object the legislation sought to achieve. If the substitution of the words "includes any person continuing in possession after the termination of his

tenancy or in the event of such person's death, such of his heirs as were ordinarily residing with him at the time of his death" in the amended definition of 'tenant' in Section 2(h) of the Act is read in the context of the aforesaid Statement of Objects and Reasons and the proximity between the date of delivery of judgment in Anand Nivas (P) Ltd. case¹ and the issuance of the Ordinance, there cannot be any manner of doubt that the amendment was brought in to give protection not only to the statutory tenant but also to such of his heirs as were ordinarily residing with him in the demised premises at the time of his death. That necessarily means that the words "in the event of such person's death" in Section 2(h) refer only to the death of the person who was continuing in possession after the termination of his tenancy and not also to the person referred to in its earlier clause, namely, the contractual tenant.

14. The matter can be viewed from another angle also. If the words "such person's death" are to refer to both the clauses relating to contractual tenant and statutory tenant, as suggested by Dr Ghosh, it would mean that the right of tenancy, which, before the amendment of Section 2(h) was to devolve upon all the heirs of a contractual tenant would, after the amendment, be limited to those heirs who were ordinarily residing with him at the time of his death and not all. Such an extravagant interpretation would militate against the purpose, spirit and letter of the amendment.

15. For the foregoing discussion and in view of the admitted fact that Mrs Menan was a contractual tenant at the time of her death, it must therefore be held that the respondent inherited the tenancy as her heir. Consequently, the question as to whether she was ordinarily residing with her mother at the time of her death becomes redundant. We therefore dismiss the appeal but without any order as to costs.

16. Before parting with this judgment we would like to keep on record that our reference to and reliance upon Anand Nivas (P) Ltd. case¹ was for the limited purpose of interpreting Section 2(h) of the West Bengal Premises Tenancy Act, 1956 for, the principle enunciated therein relating to inheritance of "statutory tenancy" stands overruled by a Bench of five learned Judges in Gian Devi Anand v. Jeevan Kumar².

2 (1985) 2 SCC 683 : AIR 1985 SC 796