

H.C. Pandey vs G.C. Paul on 28 April, 1989

Equivalent citations: 1989 AIR 1470, 1989 SCR (2) 769, AIR 1989 SUPREME COURT 1470, 1989 3 SCC 77, 1989 ALL. L. J. 692, (1989) 1 APLJ 70, (1989) 2 MAD LJ 24, 1989 MAH LJ 461, 1989 MPLJ 365, (1989) 1 ALL WC 639, (1989) 2 APLJ 44, (1989) 1 KER LT 82, (1989) 39 DLT 126, (1989) 1 LS 47, 1989 RAJLR 261, 1989 BBCJ 89, 1991 BOMRC 30, 1989 ALL CJ 333, (1989) 2 JT 261 (SC), 1989 (1) RENCRA 493, (1989) 2 MAD LW 97

Author: R.S. Pathak

Bench: R.S. Pathak

PETITIONER:

H.C. PANDEY

Vs.

RESPONDENT:

G.C. PAUL

DATE OF JUDGMENT 28/04/1989

BENCH:

PATHAK, R.S. (CJ)

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NATRAJAN, S. (J)

CITATION:

1989 AIR 1470 1989 SCR (2) 769

1989 SCC (3) 77 JT 1989 (2) 261

1989 SCALE (1) 1147

CITATOR INFO :

D 1990 SC2053 (4)

ACT:

Transfer of Property Act, 1882: s. 106--Notice determining tenancy served on co-inheritor--Validity of.

HEADNOTE:

The respondent inherited tenancy of the demised premises along with his mother, brothers and sisters from their father. A notice under s. 106 of the Transfer of Property Act terminating the tenancy was served on him. It was followed

by a suit for ejectment against him.

Upholding the validity of the said notice, the trial court took the view that the heirs of the original tenant held the tenancy as joint tenants and, therefore, notice to one of the defendants was sufficient to determine the tenancy.

Allowing the appeal therefrom, the 'High Court took the view that as heirs of the deceased tenant they held the tenancy as tenants-incommon and not as joint-tenants. Therefore, the notice to quit should have been served on each one of the successor tenants.

Allowing the appeal by special leave, the Court,

HELD: The notice under s. 106 of the Transfer of Property Act served by the appellant on the respondent was a valid notice. [771E]

On the death of the original tenant, subject to any provision to the contrary either negating or limiting the succession, the tenancy rights devolve on the heirs of the deceased tenant. The incidence of the tenancy are the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs. There is no division of the premises or of the rent payable therefor. The heirs thus succeed to the tenancy as joint-tenants. [771C]

In the instant case, the respondent acted on behalf of the tenants, he paid rent on behalf of all and accepted notice also on behalf of all. In the circumstances, the notice served on the respondent was sufficient. The suit must, therefore, succeed. [771D]

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Shrimati Vishnawati v. Bhagwat. Vithu Chowdhry, [1969] A.L.J. 1131, affirmed.

Ramesh Chand Bose v. Gopeshwar Prasad Sharma, AIR 1977 Allahabad 38, overruled.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3342 of 1979.

From the Judgment and Order dated 28.4.1978 of the Allahabad High Court in Second Civil Appeal No. 300 of 1975.

O.P. Rana and Raju Ramachandran for the Appellant. Vivek Ghambir and Praveen Kumar for the Respondent. The Judgment of the Court was delivered by PATHAK, CJ. This is a landlord's appeal by special leave arising out of a suit for ejectment.

The respondent's father B.M. Paul, was the tenant of the premises in question. On his death he left behind the respondent, his mother, brothers and sisters who inherited the tenancy. A notice under s. 106 of the Transfer of Property Act terminating the tenancy was addressed to the

respondent and was served on him. It was not addressed and served on the other tenants. A suit for ejectment was filed by the appellant against the respondent. The validity of the notice to quit was challenged by the respondent. It was contended that notice should have been addressed to all the members of the family and served on them, and in the absence of notice to all the suit was incompetent. The trial court upheld the validity of the notice relying upon the decision of the Allahabad High Court in *Shrimati Vishnawati v. Bhagwat Vithu Chowdhry*, [1969] A.L.J. 1131 on the footing that the defendants were joint tenants and constituted a single unit and therefore notice to one of the defendants was sufficient to determine the tenancy. The view proceeded on the basis that the heirs of the original tenant held the tenancy as joint tenants. When the matter ultimately came to the High Court in second appeal, the High Court took the view that as heirs of the deceased tenant they held the tenancy as tenants in common and not as joint tenants. Accordingly, the High Court said, notice to quit should have been served on each one of the successor tenants. In that view, the High Court allowed the appeal and dismissed the suit. The High Court relied on *Ramesh Chand Bose v. Gopeshwar Prasad Sharrna*, AIR 1977 'Allahabad 38 where it was held that a tenancy was a heritable property right and the heirs of the deceased tenant became tenants themselves.

In this appeal the entire question is whether the notice addressed to the respondent alone is a valid notice. It is now well settled that on the death of the original tenant, subject to any provision to the contrary either negating or limiting the succession, the tenancy rights devolve on the heirs of the deceased tenant. The incidence of the tenancy are the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs. There is no division of the premises or of the rent payable therefor. That is the position as between the landlord and the heirs of the deceased tenant. In other words, the heirs succeed to the tenancy as joint tenants. In the present case it appears that the respondent acted on behalf of the tenants, that he paid rent on behalf of all and he accepted notice also on behalf of all. In the circumstances, the notice served on the respondent was sufficient. It seems to us that the view taken in *Ramesh Chand Bose* (supra) is erroneous where the High Court lays down that the heirs of the deceased tenant succeed as tenants in common. In our opinion, the notice under s. 106 of the Transfer of Property Act served by the appellant on the respondent is a valid notice and therefore the suit must succeed. In the result, the appeal is allowed, the judgment and decree of the High Court are set aside and the judgment and decree of the First Appellate Court are restored. There is no order as to costs.

P.S.S.

Appeal allowed.