Vasant Pratap Pandit vs Dr Anant Trimbak Sabnis on 12 April, 1994

Equivalent citations: 1994 SCC (3) 481, JT 1994 (3) 267, 1994 AIR SCW 2601, 1994 (3) SCC 481, (1995) 1 GUJ LH 737, 1995 HRR 56, (1994) MAH LJ 1450, (1994) 2 RENCJ 400, (1994) 1 RENCR 747, (1994) 3 SCR 451 (SC), 1994 BOMRC 412, (1994) 1 RENTLR 541, (1994) 2 SCJ 286, 1994 SCFBRC 200, 1994 UJ(SC) 2 273, (1994) 3 JT 267 (SC), (1995) 2 BOM CR 388

Author: M.K Mukherjee

Bench: M.K Mukherjee, S. Mohan

PETITIONER:
VASANT PRATAP PANDIT

Vs.

RESPONDENT:
DR ANANT TRIMBAK SABNIS

DATE OF JUDGMENT12/04/1994

BENCH:
MUKHERJEE M.K. (J)
BENCH:
MUKHERJEE M.K. (J)
MOHAN, S. (J)

CITATION:
1994 SCC (3) 481 JT 1994 (3) 267
1994 SCALE (2)541

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by M.K. MUKHERJEE, J.- The principal question that arises for consideration in these two appeals, preferred against the judgments of the High Court of Bombay, is whether tenancy rights under the Bombay Rents, Hotel and Lodging House Rates

Control Act, 1947 (hereinafter referred to as 'the Act') can be devised by a will. Ancillary thereto arises the question whether the words 'assign' and 'transfer' in Section 15 of the Act include 'bequest'. Facts relevant for the purpose of disposal of the appeals are as under.

Civil Appeal No. 2584 of 1980

2. One Tara Bai, who was the tenant of the disputed premises, died issueless. She left behind a will bequeathing her properties, including tenancy right in the said premises, to her sister's son Gopal and appointing the plaintiff-appellant, her brother's son, as executor thereof. The defendant respondent, who happens to be the grandson of a sister of the legatee, and his wife were staying with Tara Bai in the disputed premises. After her death, the appellant called upon the respondent to vacate the premises and on his refusal instituted a suit for eviction in the City Civil Court, Bombay. The respondent resisted the suit principally on the ground, that the bequest of the tenancy rights amounted to 'transfer' and it was impermissible under Section 15 of the Act. Consequently, the respondent urged, the appellant could not claim his eviction. Negativing the contention of the respondent the trial court decreed the suit and aggrieved thereby the respondent preferred an appeal in the High Court. While allowing the appeal and dismissing the suit by the impugned judgment, the High Court held that the word 'heir' appearing in section 5(1)(c) of the Act did not include 'legatee' and that the words 'assign' and 'transfer' appearing in Section 15 of the Act were used in a genenc sense to include bequest. Resultantly, the High Court concluded that the appellant had no right to file the suit.

3. Claiming herself to be the sole legatee of her father, under the probated will dated 6-10-1961, in respect of his tenancy rights in the disputed premises, the plaintiff- appellant filed a suit for eviction of her brother and his wife therefrom in the City Civil Court, Bombay. In Contesting the suit the defendant-respondents denied that the tenancy rights in respect of the suit premises had vested in the appellant by operation of law and asserted that as members of the family of the deceased residing with him it the time of his death, they were entitled to remain in possession. Relying upon the earlier judgment of the Bombay High Court in the case of Anant T. Sabnis (Dr) v. Vasant Pratap Pandit1 (which is impugned herein) the trial court dismissed the suit and in appeal the High Court affirmed the same.

AIR 1980 Bom 69: (1979) 2 Rent LR 545: 1977 Hindu LR 647

4. To appreciate the contentions raised by Shri Soli J. Sorabjee, the learned counsel appearing in support of the appeals, it will be advantageous to first refer to Section 5(11)(c) of the Act which read as under :

"5. (11) tenant means any person by whom or on whose account rent is payable for any premises and includes

(a) ...

(aa) ...

(b) ...

(bb) ...

(c)(i) in relation to any premises let for residence, when the tenant dies, ... any member of the tenant's family residing with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided in default of agreement by the court;

(ii) in relation to any premises let for the purpose of education, business, trade or storage, when the tenant dies, ... any member of the tenant's family using the premises for the purposes of education or carrying on business, trade or storage in the premises, with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided in default of agreement by the court.

5. The other section which requires consideration is Section 15 and it reads, so far as it is relevant for our present purposes, as follows :

> "(1) Notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be lawful after the coming into operation of this Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer ....

6. Both the disputed premises herein being residential we are concerned with the definition of 'tenant' as appearing in sub-clause (i) of Section 5(11)(c). From a bare perusal thereof it is patently clear that consequent upon the death of a tenant two categories of persons are to be treated as stepping into his shoes (i) any member of the tenant's family residing with him at the time of his death and, in case of absence of such member, (ii) any heir of the deceased tenant as may be decided in default of agreement by the court Having regard to the admitted fact that both the appellants herein have founded their case as 'legatees' and not as members of the deceased tenant's family residing with him at the time of his death we have to ascertain whether they answer the description of 'heirs' within the meaning of Section 5(11)(c)(i) of the Act.

7. In the case of Jaspal Singh v. District Judge2 this Court was required to interpret the word 'heir' as appearing in Section 3(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, which defined 'tenant'. In so doing, the Court referred to judgments of some High Courts interpreting the word 'heir' appearing in different legislations and observed that the word 'heir' may be construed both in a wider as well as in a narrower sense and, therefore, which sense would be applicable to the facts of a particular case would depend upon the intention and scheme of the particular legislation in which the question occurred.

8. Relying upon the above observations in Jaspal Singh case2, Mr Sorabjee submitted that having regard to the paramount object of the Act to give protection from eviction to the family members of the deceased-tenant the expression 'heir' occurring in Section 5(11)(c) of the Act should not be construed narrowly but should be construed widely to include, not any and every legatee under a

will, but family members of the deceased-tenant who would be entitled to the estate either by virtue of a will or by intestate succession. According to him, there is no rational or intelligible basis whatsoever for making a distinction between a family member who is entitled to the estate of the deceased-tenant under a will and another who is entitled to the estate by virtue of intestate succession. He submitted that the distinction between family members merely on the ground whether they claim under a will or under the rules of intestate succession was plainly invidious and had no rational relation to the object of the Act which was to give protection to the family members of the deceased-tenant. Moreover such an interpretation would lead to patently discriminatory results and be violative of Article 14 of the Constitution, argued Mr Sorabjee. In interpreting Section 15 of the Act, he submitted that the word 'transfer' appearing therein did not include a testamentary bequest as it took effect only after the testator's death and could be revoked at any time before the happening of that event. He contended that there was no reason why, in the absence of any definition of 'transfer' under the Act, the definition thereof as appearing in the cognate legislation, namely, the Transfer of Property Act should not be taken note of and applied so as to interpret the word 'transfer' to mean acts done inter vivos. When Mr Sorabjee's attention was drawn by Mr Bobde, the learned counsel appearing for the respondents, to the case of Bhavarlal L. Shah v. Kanaiyalal N. Intawala3 which has expressly approved the judgment impugned in the first of the two appeals before us (Civil Appeal No. 2584 of 1980) he sought to distinguish the case contending that (i) the question whether the expression 'transfer' includes 'bequest' did not directly arise for consideration therein,

(ii) there was an internal inconsistency in the judgment inasmuch as it has been observed therein "we do not propose to deal with the wider proposition that a statutory tenancy which is personal to the tenant cannot be bequeathed at all under a will in 2 (1984) 4 SCC 434: (1985) 1 SCR 889 3 (1986) 1 SCC 571 favour of anybody. We leave the said question open" and

(iii) all relevant aspects of the matter were not brought to the notice of the court and hence it required reconsideration by a larger Bench.

9. Having given our anxious consideration to the contentions raised by Mr Sorabjee we are unable to accept the same.

10. In Partington's Landlord and Tenant at p. 80 (2nd Edn.) it is stated "Statutory tenants cannot assign their premises in any event."

Again at p. 429 it is stated :

> "Statutory tenants cannot assign (Rent Act 1977, Section 2)."

11. Section 2 of Rent Act, 1977 reads as follows "2. (1) Subject to this part of this Act

(a) after the termination of a protected tenancy of a dwellinghouse the person who, immediately before that termination, was the protected tenant of the dwelling-house shall, if and so long as he occupies the dwelling- house as his residence, be the statutory tenant of it; and

(b) Part 1 of Schedule 1 to this Act shall have effect for determining what person (if any) is the statutory tenant of a dwelling- house at any time after the death of a person who, immediately before his death, was either a protected tenant of the dwelling-house or the statutory tenant of it by virtue of paragraph (a) above.

(2) In this Act a dwelling-house is referred to as subject to a statutory tenancy when there is a statutory tenant of it.

(3) In sub-section (1)(a) above and in Part I of Schedule 1, the phrase 'if and so long as he occupies the dwelling-house as his residence' shall be construed as it was immediately before the commencement of this Act [that is to say, in accordance with Section 3(2) of the Rent Act, 1968].

(4) A person who becomes a statutory tenant of a dwelling-house as mentioned in sub- section (1)(a) above is, in this Act, referred to as a statutory tenant by virtue of his previous protected tenancy.

(5) A person who becomes a statutory tenant as mentioned in subsection (1)(b) above is, in this Act, referred to as a statutory tenant by succession."

12. At pp. 2 10-1 1, statutory tenants by succession is spoken to as under:

> "Statutory tenants by succession.- Rent Act, 1977 Schedule I (as amended by Housing Act, 1980, Section 76) provides for a statutory tenancy by succession to arise on two occasions :
>
> 1. The provisions of paragraph 2 or, as the case may be paragraph 3 of this Schedule shall have effect, subject to Section 2(3) of this Act, for the purpose of determining who is the statutory tenant of a dwellinghouse by succession after the death of the person (in this Schedule referred to as 'the original tenant') who, immediately before his death, was a protected tenant of the dwelling-house or the statutory tenant of it by virtue of his previous protected tenancy.
>
> 2. The surviving spouse (if any) of the original tenant, if residing in the dwelling-

house immediately before the death of the original tenant, shall after the death be the statutory tenant if and so long as he or she occupies the dwelling-house as his or her residence.

3. Where paragraph 2 above does not apply, but a person who was a member of the original tenant's family was residing with him at the time of and for the period of six months immediately before his death then,after his death, that person or if there are more than one such persons, such one of them as may be decided by agreement, or in default of agreement by the county court, shall be the statutory tenant if and so long as he occupies the dwelling-house as his residence."

Thus, it is clear that nowhere bequest is thought of. Normally speaking, the right would be heritable but the question is whether the right to inherit has been restricted by legislation.

13. Now, we may look at the meaning of the words heirs, heir at law and heir testamentary as stated in Black's Law Dictionary, 6th Edn. at pp. 723 and 724:

> "Heirs. At common law, the person appointed by law to succeed to the estate in case of intestacy. One who inherits property, whether real or personal. A person who succeeds, by the rules of law, to an estate in lands, tenements, or hereditaments, upon the death of his ancestor, by descent and right of relationship. One who would receive his estate under statute of descent and distribution. Faulkner's Guardian v. Faulkner4. Moreover, the term is frequently used in a popular sense to designate a successor to property either by will or by law.
>
> Heir at law. At common law, he who, after his ancestor dies intestate, has a right to all lands, tenements, and hereditaments which belonged to him or of which he was seised. The same as 'heir general'.
>
> A deceased person's 'heirs at law' are those who succeed to his estate of inheritance under statutes or descent and distribution, in absence of testamentary disposition, and not necessarily his heirs at common law, who are persons succeeding to deceased's realty in case of his intestacy.
>
> Heir testamentary. In the civil law, one who is named and appointed heir in the testament of the decedent. This name distinguishes him from a legal heir (one upon whom the law casts the succession), and from a conventional heir (one who takes it by virtue of a previous contract or settlement)."

In the light of the above we may consider the object and scheme of the Act to ascertain in which sense the word 'heir' applies here.

4 237 Ky 147, 35 S.W. 2d 6, 7

14. From a plain reading of Section 5(11)(c)(i) it is obvious that the legislative prescription is first to give protection to members of the family of the tenant residing with him at the time of his death. The basis for such prescription seems to be that when a tenant is in occupation of premises the tenancy is taken by him not only for his own benefit but also for the benefit of the members of the family residing with him. Therefore, when the tenant dies, protection should be extended to the members of the family who were participants in the benefit of the tenancy and for whose needs as well the tenancy was originally taken by the tenant. It is for this avowed object, the legislature has, irrespective of the fact whether such members are 'heirs' in the strict sense of the term or not, given them the first priority to be treated as tenants. It is only when such members of the family are not there, the 'heirs' will be entitled to be treated as tenants as decided, in default of agreement, by the court. In other words, all the heirs are liable to be excluded if any other member of the family was staying with the tenant at the time of his death. When Section 15, which prohibits sub-letting, assignment or transfer, is read in juxtaposition with Section 5(11)(c)(i) it is patently clear that the legislature intends that in case no member of the family as referred to in the first part of the clause is

there the 'heir', who under the ordinary mode of succession would necessarily be a relation of the deceased, should be treated as a tenant of the premises subject, however, to the decision by the court in default of agreement. The words "as may be decided in default of agreement by the Court" as appearing in Section 5(11)(c)(i) are not without significance. These words in our view have been incorporated to meet a situation where there are more than one heirs. In such an eventuality the landlord may or may not agree to one or the other of them being recognised as a 'tenant'. In case of such disagreement the court has to decide who is to be treated as 'tenant'. Therefore, if 'heir' is to include a legatee of the will then the above-quoted words cannot be applied in case of a tenant who leaves behind more than one legatee for in that case the wishes of the testator can get supplanted, on the landlord's unwillingness to respect the same, by the ultimate decision of the court. In other words, in case of a testamentary disposition, where the wish or will of the deceased has got to be respected a decision by the court will not arise and that would necessarily mean that the words quoted above will be rendered nugatory. What we want to emphasise is it is not the heirship but the nature of claim that is determinative. In our considered view the legislature could not have intended to confer such a right on the testamentary heir. Otherwise, the right of the landlord to recover possession will stand excluded even though the original party (the tenant) with whom the landlord had contracted is dead. Besides, a statutory tenancy is personal to the tenant. In certain contingencies as contemplated in Section 5(11)(c)(i) certain heirs are unable to succeed to such a tenancy. To this extent, a departure is made from the general law.

15. The matter may be viewed from another angle also. If the word 'heir' is to be interpreted to include a 'legatee' even a stranger may have to be inducted as a tenant for there is no embargo upon a stranger being a legatee.

The contention of Mr Sorabjee that 'heir' under a will may be confined to only members of the family cannot be accepted for there is no scope for giving such a restrictive meaning to that word in the context in which it appears in the Act as earlier noticed, unlike in other Rent Acts.

16. Coming now to the meaning of the words 'assign' or 'transfer' as appearing in Section 15 we find that 'transfer' has been qualified by the words 'in any other manner' and we see no reason why it should be restricted to mean only transfer inter vivos. As has been rightly pointed out by the High Court in the impugned judgment the Transfer of Property Act limits its operation to transfer inter vivos and, therefore, the meaning of the word 'transfer' as contained therein cannot be brought in aid for the purpose of the Act. On the contrary, the wide amplitude of the words 'in any other manner' clearly envisages that the word 'transfer' has been used therein in a generic sense so as to include transfer by testament also.

17. For the foregoing discussion we do not find any justification to take a view different from the view expressed by this Court in the case of Bhavarlal L. Shah3 while approving the findings recorded in the case of Anant T. Sabnis (Dr) v. Vasant Pratap Pandit1 which is under challenge before us (Civil Appeal No. 2584 of 1980). Incidentally, we may mention that while approving the above judgment this Court pointed out in Bhavarlal case3 that the reasons given therein were perfectly justified in the context of the object and scheme of the Act (emphasis supplied); and the question that is left open by this Court therein is to be considered in the light of the provisions of the Rent Act

as in force in the State of Gujarat which has given a different meaning to the word 'tenant'.

18. For the foregoing discussion, we dismiss both the appeals. However, there will be no order as to costs.