

Shakuntala Bai & Ors vs Narayan Das & Ors on 5 May, 2004

Equivalent citations: AIR 2004 SUPREME COURT 3484, 2004 AIR SCW 3291, 2004 (4) SLT 212, (2004) 18 ALLINDCAS 9 (SC), 2004 (2) ALL CJ 1828, 2004 (18) ALLINDCAS 9, 2004 ALL CJ 2 1828, 2004 (5) ACE 569, 2004 SCFBRC 338, 2004 (5) SCALE 543, 2004 (5) SCC 772, 2004 (2) HRR 5, 2004 (7) SRJ 400, (2003) 71 DRJ 437, (2003) 2 RENCRC 696, (2003) 107 DLT 77, (2004) 55 ALL LR 741, (2004) 4 CAL HN 180, (2004) 3 CIVILCOURTC 206, (2004) 4 MAD LW 242, (2004) 2 PUN LR 845, (2004) 1 RENCRC 580, (2004) 4 ANDHLD 88, (2004) 5 SCALE 543, (2004) 4 SUPREME 47, (2004) 2 WLC(SC)CVL 162, (2004) 19 INDLD 471, (2004) 1 RENCJ 141, (2004) 6 BOM CR 224

Author: G.P. Mathur

Bench: Chief Justice, G.P. Mathur

CASE NO.:

Appeal (civil) 4496-4497 of 1998

PETITIONER:

Shakuntala Bai & Ors.

RESPONDENT:

Narayan Das & Ors.

DATE OF JUDGMENT: 05/05/2004

BENCH:

CJI& G.P. Mathur.

JUDGMENT:

JUDGMENT G.P. MATHUR,J.

1. It is a shocking case. A suit for eviction of a tenant was instituted more than 42 years back in March, 1962 for the bona fide need of carrying on business by the owner landlord but his widow and sons are still knocking the doors of court of justice. During the pendency of the appeal filed by the tenant the landlord died leaving a widow and minor sons but this, the High Court thought, came to the advantage of the tenant, rendering the suit liable for dismissal, little realizing that they also needed some place to carry on business for survival. Such extreme views erode the faith of people in the judicial system prompting them to take recourse to extra judicial methods to recover possession of their property.

2. These appeals by special leave have been preferred against the judgment and order dated 3.9.1997 of the High Court of Madhya Pradesh by which the second appeals filed by the respondents/tenants were allowed and the suit for their eviction was dismissed.

3. Girdhari Lal Gattani (husband of appellant no.1 and father of appellants no.2 to 4) filed a suit on 31.3.1962 for eviction of Magan Lal (father of respondents) from a non-residential premises. The suit was filed on the ground that he required the premises for carrying on his own business. The suit was decreed by the trial Court against which an appeal was preferred by Magan Lal. During the pendency of the appeal, Girdhari Lal died and the appellants herein were substituted as his heirs and legal representatives. The appellants sought an amendment of the plaint and pleaded that they bonafidely require the premises for carrying on business. The tenant Magan Lal sought an amendment in the written statement to the effect that after the death of Girdhari Lal, the bona fide requirement of the premises for carrying on business pleaded in the suit came to an end. The lower appellate Court allowed the amendments and remanded the matter to the trial Court for fresh consideration. During the pendency of the suit, the plaint was further amended and it was pleaded that the appellants no.2, 3 and 4 had also attained majority and they wanted to start a cloth business in the premises in dispute. The trial Court, after affording the parties an opportunity to adduce evidence, dismissed the suit. The appellants then preferred an appeal and during the pendency thereof the original tenant Magan Lal died and his sons, respondents no.1 and 2 were substituted in the plaint. The lower appellate Court allowed the appeal and decreed the suit for eviction. Feeling aggrieved by the aforesaid judgment and decree of eviction, the respondents preferred second appeal which has been allowed by the High Court by the impugned judgment/decreed dated 3.9.1997 and the suit has been dismissed.

4. The main ground on which the appeal has been allowed by the High Court is that in a suit filed by the landlord for eviction of a tenant, the requirement or need set up by him must subsist till the appeal filed by the tenant is finally decided and that a tenant can always take advantage of subsequent event like death of the landlord at a later stage during the pendency of the appeal etc. to urge that the requirement or need of the landlord has come to an end. Accordingly, it has been held that on the death of Girdhari Lal Gattani, the Civil Suit filed by him ought to have been dismissed as his legal heirs, the appellants herein, could not have continued the suit which was based on personal bona fide need.

5. The question which requires consideration is whether on account of death of a landlord during the pendency of the appeal, a suit validly instituted by him for eviction of a tenant on the ground of his personal need, is liable to be dismissed.

6. The enactment with which we are concerned is the Madhya Pradesh Accommodation Control Act, 1961 (Act No.41 of 1961). The preamble of the Act reads as under :

"An Act to provide for the regulation and control of letting and rent of accommodations, for expeditious trial of eviction cases on ground of "bona fide" requirement of certain categories of landlords and generally to regulate and control eviction of tenants from accommodations and for other matter connected therewith

or incidental thereto."

As the preamble shows the Act has been enacted to regulate and control eviction of tenants and for expeditious trial of eviction cases on the ground of bona fide requirement of certain categories of landlords. Section 2(b) defines a "landlord" and it reads as under :

2(b). "landlord" means a person, who, for the time being, is receiving, or is entitled to receive, the rent of any accommodation, whether on his own account or on account of or on behalf of or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the accommodation were let to a tenant and includes every person not being a tenant who from time to time derives title under a landlord.

7. Chapter III deals with control of eviction of tenants and sub-section (1) of Section 12 therein lays down that notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the grounds enumerated in the sub-section. Clause (f) of this sub-section reads as under :

(f) that the accommodation let for non-residential purposes is required bona fide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably non-

residential accommodation of his own in his occupation in the city or town concerned.

The aforesaid provisions show that a suit for eviction of a tenant from an accommodation let for non-residential purposes can be instituted by a landlord for the purpose of his own business or that of any of his major unmarried sons or daughters, if he is the owner of the premises or for any person for whose benefit the accommodation is held. It may be noticed that this clause does not say that only such a landlord who has attained majority can institute a suit. But if the need which is set up is that of the sons of the landlord then they should be major sons. There is no restriction on a landlord who may be minor to seek eviction of a tenant if the premises is bonafidely required by him.

8. As mentioned earlier, the suit filed by the original landlord Girdhari Lal Gattani was decreed by the trial Court but he died during the pendency of the appeal preferred by the tenant Magan Lal. Thereafter, the appellants (heirs of Girdhari Lal) applied for amendment of the plaint which was allowed. The amended para 5B reads as under :

"(5B). The need for which eviction was sought by the late Shri Girdharilal still persists if any this it has been much more accentuated. The contemplated business will now be run by the widow of the deceased. She has a son the respondent no.3 Laxminarayan who will shortly attain majority. He is about 16 years old. He is an

intelligent boy and is already trained in the trade. These respondents have enough money with them. Laxminarayan recently earned first price of Rs.7500/-, Girdharilal's insurance money of Rs.11000/- has also been received by the respondents. This will enable them to start business for their livelihood."

The lower appellate Court remanded the case to the trial Court for fresh consideration and during the pendency of the suit after remand, the plaintiffs again applied for amendment of the plaint, which was allowed and the main amendment so incorporated reads as under :

"(5B). The plaintiffs in right earnest shall start business of ready made garments in the suit premises. The plaintiff no.3 and 4 also attained majority during the pendency of suit. The plaintiffs no.2, 3 and 4 shall start business of ready made garments after receiving vacant possession of suit accommodation."

9. The first amendment sought by the appellants was that need of the premises in dispute not only persist but had been accentuated on account of death of Girdhari Lal. According to the plaintiffs, the business shall be carried on by his widow, who shall be assisted by her intelligent son Laxminarayan, who was then aged about 16 years and was already trained in trade. The business was required to be carried on for their livelihood. It appears that after the remand, the suit remained pending in the trial Court for quite some time and during this period, the other sons, namely, plaintiffs no.3 and 4 also attained majority and it was pleaded that all the sons will carry on the business. Thus, at the time when the trial Court finally heard the suit, all the plaintiffs were major and they had specifically set up their own bona fide need for the premises in question for carrying on business for their livelihood.

10. The effect of death of a landlord during the pendency of the proceedings has been considered in several decisions of this Court. In Smt. Phool Rani v. Naubat Rai Ahluwalia AIR 1973 SC 2110, the landlord filed an ejectment application under Section 14(1)(e) of the Delhi Rent Control Act and eviction of the tenant was sought on the ground that the premises were required by the plaintiff "for occupation as a residence for himself and members of his family". The Additional Rent Controller dismissed the application on a preliminary ground that the notices to quit were not valid, without examining the case on merits. The plaintiff died during the pendency of the appeal preferred by him and his heirs were substituted. The case was remanded and the Rent Controller passed an order of eviction. In appeal a contention was raised that the right to sue did not survive to the heirs of the plaintiff, which was rejected by the Rent Control Tribunal but was accepted in appeal by the High Court. This court held that different result may follow according to the stage at which the death occurs. One of the situations considered in para 13 of the reports is as under :

"(i) cases in which the death of the plaintiff occurred after a decree for possession was passed in his favour; say, during the pendency of an appeal filed by the unsuccessful tenant."

With regard to this category of cases it was held that the estate is entitled to the benefit which, under a decree, has accrued in favour of the plaintiff and, therefore, the legal representatives are entitled to

defend further proceedings, like an appeal, which constitute a challenge to that benefit. Even otherwise this appears to be quite logical. In normal circumstances after passing of the decree by the trial Court, the original landlord would have got possession of the premises. But if he does not and the tenant continues to remain in occupation of the premises it can only be on account of the stay order passed by the appellate Court. In such a situation, the well known maxim '*actus curiae neminem gravabit*' that 'an act of the Court shall prejudice no man' shall come into operation. Therefore, the heirs of the landlord will be fully entitled to defend the appeal preferred by the tenant and claim possession of the premises on the cause of action which had been originally pleaded and on the basis whereof the lower Court had decided the matter and had passed the decree for eviction. However in regard to the case before the court it was held that the requirement pleaded in the ejectment application on which the plaintiff founded his right to relief was his personal requirement and such a personal cause of action must perish with the plaintiff. On this ground it was held that the plaintiff's right to sue will not survive to his heirs and they cannot take the benefit of the original right to sue.

11. In *Shantilal Thakordas v. Chimanlal Maganlal Telwala* 1976 (4) SCC 417, a larger Bench overruled the decision rendered in *Phool Rani v. Naubat Rai Ahluwalia* (supra) in so far it held that the requirement of the occupation of the members of the family of the original landlord was his personal requirement and ceased to be the requirement of the members of his family on his death. The court took the view that after the death of the original landlord the senior member of his family takes his place and is well competent to continue the suit for eviction for his occupation and occupation of the other members of the family. Thus, this decision held that the substituted heirs of the deceased landlord were entitled to maintain the suit for eviction of the tenant. The ratio of this decision by larger Bench does not in any manner affect the view expressed in *Phool Rani* (supra) that where the death of the landlord occurs after a decree for possession has been passed in his favour, his legal representatives are entitled to defend further proceedings like an appeal and the benefit accrued to them under the decree. In fact, the ratio of *Shantilal Thakordas* (supra) would reinforce the aforesaid view. There are several decisions of this Court on the same line. In *Kamleshwar Prasad v. Pradumanju Agarwal* 1997(4) SCC 413 it was held that the need of the landlord for premises in question must exist on the date of application for eviction, which is the crucial date and it is on the said date the tenant incurred the liability of being evicted therefrom. Even if the landlord died during the pendency of the writ petition in the High Court, the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any other son. In *Gaya Prasad v. Pradeep Srivastava* 2001 (2) SCC 604 it was held that the crucial date for deciding as to the bonafides of requirement of landlord is the date of his application for eviction. Here the landlord had instituted eviction proceedings for the bona fide requirement of his son who wanted to start a clinic. The litigation continued for a long period and during this period the son joined Provincial Medical Service and was posted at different places. The subsequent event i.e. the joining of the service by the son was not taken into consideration on the ground that the crucial date was the date of filing of the eviction petition. Similar view has been taken in *G.C. Kapoor v. Nand Kumar Bhasin* 2002 (1) SCC 610. Therefore, the legal position is well settled that the bona fide need of the landlord has to be examined as on the date of institution of proceedings and if a decree for eviction is passed, the death of the landlord during the pendency of the appeal preferred by the tenant will make no difference as his heirs are fully entitled to defend the estate.

12. The High Court in the present case no doubt noticed the decisions rendered in Phool Rani (Supra) and Shantilal Thakordas (supra), but chose to rely upon a decision by two Judge Bench rendered in P.V. Papanna v. K. Padmanabhaiah 1994(2) SCC 316. In this case the trial Court had passed a decree for eviction which was challenged by the tenant by filing a revision in the High Court which was dismissed but four years time was granted to vacate the premises. The special leave petition preferred by the tenant was also dismissed. During the pendency of this period of four years, the landlord died leaving a will in favour of his brothers. When the tenant did not vacate the premises after the expiry of four years, the appellants applied for execution of the decree. The execution petition was allowed by the trial Court and order for eviction was passed but the order was reversed by the High Court in a revision filed by the tenant on the ground that the cause of action did not survive on the death of the landlord and the appellants (legatees claiming as legal representatives of the deceased landlord) could not execute the decree for eviction which was purely personal. After examining several earlier decisions, the Court held as under :

"18. For the foregoing discussion, we must hold that events which take place subsequent to the filing of an eviction petition under any Rent Act can be taken into consideration for the purpose of adjudication until a decree is made by the final court determining the rights of the parties but any event that takes place after the decree becomes final cannot be made a ground for reopening the decree. The finality to the dispute culminating in the decree cannot be reopened by the executing court for readjudication on the ground that some event or the other has altered the situation. As a corollary thereto it must also be held that once the decree becomes final it became a part of the estate of the landlord and therefore the appellants as legal representatives of the deceased landlord are entitled to execute the same."

13. The limited question for consideration in this case was whether a decree which had attained finality would become unexecutable on account of death of the landlord and this question was answered in favour of the landlord and against the tenant basically on the principle that the executing court cannot go behind the decree. For the decision of the appeal it was wholly unnecessary to examine the question as to the effect of death of the landlord during the pendency of the appeal preferred by the tenant after a decree for eviction has been passed. The decisions rendered in Phool Rani (Supra) and Shantilal Thakordas (supra) were not brought to the notice of the Bench. We are, therefore, of the opinion that the observations made in the aforesaid case that "events which take place subsequent to the filing of an eviction petition under any Rent Act can be taken into consideration for the purpose of adjudication until a decree is made by the final Court determining the rights of the parties", which are more in the nature of obiter do not represent the correct legal position.

14. Sub-section (1) of section 12 of the Act says "no suit shall be filed in civil court against a tenant for his eviction .." The language employed does not say "no decree shall be passed " So the bar created is against filing of the suit except on one of grounds enumerated in clauses (a) to (p) of the sub-section. Therefore what is to be seen is whether the suit was validly filed i.e. whether on the date of filing of the suit one of the grounds was made out. A suit validly filed cannot be scuttled or held no longer maintainable in absence of any specific provision to that effect. Therefore the

principle that "the need of the landlord must exist till the decree for eviction is passed by the last court and attains finality" can even otherwise have no application here in view of the express language used in the section.

15. As the preamble shows the Madhya Pradesh Accommodation Control Act, 1961 has been enacted for expeditious trial of eviction cases on the ground of bona fide requirement of landlords and generally to regulate and control eviction of tenants. If the subsequent event like the death of the landlord is to be taken note of at every stage till the decree attains finality, there will be no end to litigation. By the time a second appeal gets decided by the High Court, generally a long period elapses and on such a principle if during this period the landlord who instituted the proceedings dies, the suit will have to be dismissed without going into merits. The same thing may happen in a fresh suit filed by the heirs and it may become an unending process. Taking into consideration the subsequent events may, at times, lead to rendering the whole proceedings taken infructuous and colossal waste of public time. There is no warrant for interpreting a Rent Control legislation in such a manner the basic object of which is to save harassment of tenants from unscrupulous landlords. The object is not to deprive the owners of their properties for all times to come.

16. There is another aspect of the matter which needs consideration. After the case had been remanded, the plaint had been amended and the need of the sons had been set up who had all attained majority by that time. The Courts thereafter proceeded to decide the controversy on the basis of the need of the sons and the lower appellate Court, after finding their need to be bona fide, passed a decree for eviction in their favour. In the second appeal preferred by the tenant, the High Court, instead of examining the issues on the basis of which the case had been decided, went on to hold that on account of death of Girdhari Lal, the need set up by him came to an end and on that finding dismissed the suit. The parties having amended their respective pleadings and the two Courts below having decided the matter on such amended pleadings and the evidence adduced thereon, it was wholly impermissible on the part of the High Court to examine the question as to the effect of death of the original plaintiff and thereafter to dismiss the suit on the finding that his need having come to an end, the suit ought to have been dismissed. It is well settled that when amendment is allowed, the proceedings have to be decided on the basis of such amended pleadings. We are, therefore, of the opinion that the view taken by the High Court is wholly illegal.

17. The appeals are accordingly allowed with cost. The judgment and decree passed by the High Court is set aside and that of the Additional District Judge decreeing the suit for eviction is restored.

18. Learned counsel for the respondents (tenants) made a prayer that they may be granted some time to vacate the premises. Shri K. Ramamurthy, learned senior counsel for the appellants has very fairly stated that the respondents may be given four months' time to vacate the premises. In view of this statement, we grant four months' time to the respondents to vacate the premises subject to their filing the usual undertaking within one month in the trial Court.