Suresh Kumar Kohli vs Rakesh Jain on 19 April, 2018

Equivalent citations: AIR 2018 SUPREME COURT 2708, 2018 (6) SCC 708, AIR 2018 SC (CIV) 2162, (2018) 5 MAD LW 401, (2018) 2 WLC(SC)CVL 120, (2018) 1 RENCR 461, (2018) 1 RENTLR 626, (2018) 6 SCALE 344, (2018) 3 PAT LJR 32, (2018) 3 CIVILCOURTC 769, (2018) 2 ALL RENTCAS 40, (2018) 2 CURCC 406, (2018) 188 ALLINDCAS 234 (SC), (2018) 4 ANDHLD 136, (2018) 126 CUT LT 1119, (2018) 130 ALL LR 83, (2018) 2 JLJR 499

Author: R.K. Agrawal

Bench: R.K. Agrawal, Abhay Manohar Sapre

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No. 3996 OF 2018
(Arising out of Special Leave Petition (C) No. 5489 OF 2014)

Suresh Kumar Kohli .... Appellant(s)

Versus

Rakesh Jain and Another .... Respondent(s)

JUDGMENT

R.K. Agrawal, J.

1) Leave granted.

2) The present appeal is directed against the final judgment and order dated 05.12.2013 passed by the High Court of Delhi in CM (M) No. 880 of 2012 whereby learned single Judge of the High Court allowed the petition filed by the Respondent No. 1 herein against the judgment and order dated 08.06.2012 passed by the Additional Rent Controller in Ex Petition No. 51 of 2012 wherein the objections filed by the Respondent No. 1 herein under Section 47 read with Order XXI Rule 26(1) of the Code of Civil Procedure, 1908 (in short 'the Code') were rejected.

3) Brief facts:-

(a) Suresh Kumar Kohli-the appellant herein is the owner of shop bearing No. 3, Building No. 2656, Ajmal Khan Road, Karol Bagh, New Delhi (in short 'the suit premises'). On 15.11.1975, his father,

along with one another, let out the suit premises on a monthly rental of Rs. 450/- to Late Shri Ishwar Chand Jain, father of Respondent No. 1 herein, and Ramesh Chand Jain-Respondent No. 2 herein. The tenants started a family business under the name and style of M/s Rakesh Wool Store. Shri Rakesh Jain - Respondent No. 1 herein was inducted as a partner in the family business on 02.04.1979.

(b) On 25.04.2009, the owner sent a legal notice to Respondent No. 2 herein and his father Late Shri Ishwar Chand Jain terminating the tenancy with effect from 31.05.2009. Shri Ishwar Chand Jain died on 08.03.2010.

(c) Since the tenant failed to vacate the suit premises, the appellant herein filed Eviction Petition bearing No. E-304/2010 under Section 14(1)(e) read with Section 25-B of the Delhi Rent (Control) Act, 1958 (hereinafter referred to as 'the Act') on the ground of bona fide need. The Additional Rent Controller, New Delhi, vide judgment and order dated 30.11.2011, decreed the eviction petition in favour of the appellant herein.

(d) Being aggrieved by the decree in favour of the appellant herein, Respondent No. 2 herein preferred Rent Control Revision being No. 212 of 2012 before the High Court.

Learned single Judge of the High Court, vide judgment and order dated 08.05.2012, dismissed the revision. Aggrieved by the above order, Respondent No. 2 herein preferred Review Petition being No. 383 of 2012 before the High Court. Learned single Judge of the High Court, vide judgment and order dated 17.08.2012, dismissed the review petition filed by Respondent No. 2 herein.

(e) Meanwhile, Respondent No. 1 herein filed objections in Execution Petition No. 51/2012 under Section 47 Order XXI Rule 26(1) before the Additional Rent Controller, New Delhi claiming that he being a necessary party as he inherited rights in a joint family business and he was not aware of the pendency of the eviction proceedings. The Additional Rent Controller, vide judgment and order dated 08.06.2012, rejected the objection petition filed by Respondent No. 1 herein.

(f) Aggrieved by the order dated 08.06.2012, Respondent No. 1 herein preferred CM (Main) No. 880 of 2012 before the High Court. Learned single Judge of the High Court, vide judgment and order dated 05.12.2013, allowed the petition filed by the Respondent No. 1 herein.

(g) Aggrieved by the judgment and order dated 05.12.2013, the appellant has preferred this appeal by way of special leave before this Court.

4) Heard Mr. Dhruv Mehta, learned senior counsel for the appellant and Mr. Huzefa Ahmadi, learned senior counsel for the respondents and perused the records.

Point(s) for consideration:-

> 5) The only point for consideration before this Court is whether in the light of present facts and circumstances of the case, the status of the heirs and legal representatives of

the deceased tenant will be of joint tenants or of tenants-in-common.

Rival submissions:-

6) Learned senior counsel appearing for the appellant contended that the High Court failed to appreciate the fact that Respondent No.2, apart from being a tenant in his own right, was also one of the heirs and legal representative of the deceased - Shri Ishwar Chand Jain and, thus, his estate and interest was amply represented and the absence of Respondent No.1 was not fatal to the maintainability of the Eviction Petition filed by the appellant against the tenant-Respondent No.2. Learned senior counsel further contended that Respondent No.2 and his father late Shri Ishwar Chand Jain were joint tenants when their tenancy was determined, and therefore, eviction suit filed by the landlord-appellant against one of the joint tenant was perfectly valid and maintainable. The death of one of the joint tenant after termination of the tenancy will have no effect as right of the party crystallized on the date of service of the notice and termination of the tenancy.

7) Learned senior counsel further contended that the High Court erred in holding that Respondent No.1 was a necessary party to the suit for eviction on the ground that the tenancy between the parties is tenancy-in-common and not a joint tenancy. He finally contended that the High Court erred in law in applying the provisions of the Hindu Succession Act, 1956 while interpreting the status of Respondent No.1 qua the suit shop after the death of his father who was the original tenant in the suit premises. The Act, being a special Act and the "tenant" having been defined in the said Act, the provisions of the Rent Act will prevail over the provisions of the Hindu Succession Act, 1956. In support of his plea, learned senior counsel relied upon the following decisions of this Court, viz., H.C. Pandey vs. G.C. Paul (1989) 3 SCC 77, Mohd. Usman vs. (Mst.) Surayya Begum (1990) 2 RCR (Rent) 408, Mst. Surayya Begum vs. Mohd. Usman and Others (1991) 3 SCC 114 and Harish Tandon vs. Addl. District Magistrate, Allahabad, U.P. and Others (1995) 1 SCC 537.

8) On the other hand, learned senior counsel appearing for the respondents contended that on a careful perusal of the provisions of the Act and the definition of 'Tenant' given thereunder read with Section 19 of the Hindu Succession Act, 1956, the intention of the legislature would not be to exclude the former Act from the operation of the latter and the High Court was right in placing reliance on Section 19 of the Hindu Succession Act,1956 to hold that on the death of a tenant, his legal heirs hold the tenancy estate as tenants-in-common and not as joint tenant.

9) Learned senior counsel further submitted that the present appeal deserves to be dismissed as the appellant has acted in a clandestine manner to undermine the interest of Respondent No. 1 in the suit premise and the High Court was right in setting aside the order of the Additional Rent Controller and directing the impleadment of Respondent No. 1 in the eviction petition. He finally contended that

the findings of the High Court in the present case should not be interfered with as the same would lead to grave injustice to the respondents. In support of his aforesaid pleas, learned senior counsel has relied upon the following decisions of this Court, viz., Boddu Venkatakrishna Rao and Others vs. Smt. Boddu Satyavathi and Others AIR 1968 SC 751, Gian Devi Anand vs. Jeevan Kumar and Others (1985) 2 SCC 683 and Uttam vs. Saubhag Singh and Others (2016) 4 SCC 68.

Discussion:-

10) The issue at hand is what would be the status of the succeeding legal representatives after the death of the statutory tenant. In this regard, it would be worthy to discuss the two capacities, viz., tenancy-in-common and joint tenancy, and the rights that one holds in these two different capacities.

Fundamentally, the concepts of joint tenancy and tenancy-in-common are different and distinct in form and substance. The incidents regarding the co-tenancy and joint tenancy are different: joint tenants have unity of title, unity of commencement of title, unity of interest, unity of equal shares in the joint estate, unity of possession and right of survivorship.

11) Tenancy-in-common is a different concept. There is unity of possession but no unity of title, i.e. the interests are differently held and each co-tenant has different shares over the estate. Thus, the tenancy rights, being proprietary rights, by applying the principle of inheritance, the shares of heirs are different and ownership of leasehold rights would be confined to the respective shares of each heir and none will have title to the entire leasehold property. Therefore, the estate shall be divided among the co-tenants and each tenant in common has an estate in the whole of single tenancy. Consequently, the privity exists between the landlord and the tenant in common in respect of such estate.

12) In Boddu Venkatakrishna Rao (supra), this Court has held as under:-

"5. Let us now consider the position in law. The law has been summarised in Mulla's Transfer of Property Act (Fifth Edition) at page 226. As early as 1896 it was held by the Judicial Committee of the Privy Council in Jogeswar Narain Deo v. Ram Chandra Dutt that "The principle of joint tenancy appears to be unknown to Hindu law except in the case of coparcenary between the members of an undivided family." and that it was not right to import into the construction of a Hindu will an extremely technical rule of English conveyancing. Many years later the principle was reiterated in the case of Mt. Bahu Rani v. Rajendra Baksh Singh.."

13) In Gian Devi (supra), this Court has held as under:

"34. It may be noticed that the Legislature itself treats commercial tenancy differently from residential tenancy in the matter of eviction of the tenant in the Delhi Rent Act and also in various other Rent Acts. All the grounds for eviction of a tenant of

residential premises are not made grounds for eviction of a tenant in respect of commercial premises. Section 14(1)(d) of the Delhi Rent Act provides that non-user of the residential premises by the tenant for a period of six months immediately before the filing of the application for the recovery of possession of the premises will be a good ground for eviction, though in case of a commercial premises no such provision is made. Similarly, Section 14(1)(e) which makes bona fide requirement of the landlord of the premises let out to the tenant for residential purposes a ground for eviction of the tenant, is not made applicable to commercial premises. A tenant of any commercial premises has necessarily to use the premises for business purposes. Business carried on by a tenant of any commercial premises may be and often is, his only occupation and the source of livelihood of the tenant and his family. Out of the income earned by the tenant from his business in the commercial premises, the tenant maintains himself and his family; and the tenant, if he is residing in a tenanted house, may also be paying his rent out of the said income. Even if a tenant is evicted from his residential premises, he may with the earnings out of the business be in a position to arrange for some other accommodation for his residence with his family. When, however, a tenant is thrown out of the commercial premises, his business which enables him to maintain himself and his family comes to a standstill. It is common knowledge that it is much more difficult to find suitable business premises than to find suitable premises for residence. It is no secret that for securing com- mercial accommodation, large sums of money by way of salami, even though not legally payable, may have to be paid and rents of commercial premises are usually very high. Besides, a business which has been carried on for years at a particular place has its own goodwill and other distinct advantages. The death of the person who happens to be the tenant of the commercial premises and who was running the business out of the income of which the family used to be maintained, is itself a great loss to the members of the family to whom the death, naturally, comes as a great blow. Usually, on the death of the person who runs the business and maintains his family out of the income of the business, the other members of the family who suffer the bereavement have necessarily to carry on the business for the maintenance and support of the family. A running business is indeed a very valuable asset and often a great source of comfort to the family as the business keeps the family going. So long as the contractual tenancy of a tenant who carries on the business continues, there can be no question of the heirs of the deceased tenant not only inheriting the tenancy but also inheriting the business and they are entitled to run and enjoy the same. We have earlier held that mere termination of the contractual tenancy does not bring about any change in the status of the tenant and the tenant by virtue of the definition of the “tenant” in the Act and the other Rent Acts continues to enjoy the same status and position, unless there be any provisions in the Rent Acts which indicate to the contrary. The mere fact that in the Act no provision has been made with regard to the heirs of tenants in respect of commercial tenancies on the death of the tenant after termination of the tenancy, as has been done in the case of heirs of the tenants of residential premises, does not indicate that the Legislature intended that the heirs of the tenants of commercial premises will cease to enjoy the protection afforded to the

tenant under the Act. The Legislature could never have possibly intended that with the death of a tenant of the commercial premises, the business carried on by the tenant, however flourishing it may be and even if the same constituted the source of livelihood of the members of the family, must necessarily come to an end on the death of the tenant, only because the tenant died after the contractual tenancy had been terminated. It could never have been the intention of the Legislature that the entire family of a tenant depending upon the business carried on by the tenant will be completely stranded and the business carried on for years in the premises which had been let out to the tenant must stop functioning at the premises which the heirs of the deceased tenant must necessarily vacate, as they are afforded no protection under the Act. We are of the opinion that in case of commercial premises governed by the Delhi Act, the Legislature has not thought it fit in the light of the situation at Delhi to place any kind of restriction on the ordinary law of inheritance with regard to succession. It may also be borne in mind that in case of commercial premises the heirs of the deceased tenant not only succeed to the tenancy rights in the premises but they succeed to the business as a whole. It might have been open to the Legislature to limit or restrict the right of inheritance with regard to the tenancy as the Legislature had done in the case of the tenancies with regard to the residential houses but it would not have been open to the Legislature to alter under the Rent Act, the law of succession regarding the business which is a valuable heritable right and which must necessarily devolve on all the heirs in accordance with law. The absence of any provision restricting the heritability of the tenancy in respect of the commercial premises only establishes that commercial tenancies notwithstanding the determination of the contractual tenancies will devolve on the heirs in accordance with law and the heirs who step into the position of the deceased tenant will continue to enjoy the protection afforded by the Act and they can only be evicted in accordance with the provisions of the Act. There is another significant consideration which, in our opinion, lends support to the view that we are taking. Commercial premises are let out not only to individuals but also to Companies, Corporations and other statutory bodies having a juristic personality. In fact, tenancies in respect of commercial premises are usually taken by Companies and Corporations. When the tenant is a Company or a Corporation or anybody with juristic personality, question of the death of the tenant will not arise. Despite the termination of the tenancy, the Company or the Corporation or such juristic personalities, however, will go on enjoying the protection afforded to the tenant under the Act. It can hardly be conceived that the Legislature would intend to deny to one class of tenants, namely, individuals the protection which will be enjoyed by the other class, namely, the Corporations and Companies and other bodies with juristic personality under the Act. If it be held that commercial tenancies after the termination of the contractual tenancy of the tenant are not heritable on the death of the tenant and the heirs of the tenant are not entitled to enjoy the protection under the Act, an irreparable mischief which the Legislature could never have intended is likely to be caused. Any time after the creation of the contractual tenancy, the landlord may determine the contractual tenancy, allowing the tenant to continue to remain in possession of the premises,

hoping for an early death of the tenant, so that on the death of a tenant he can immediately proceed to institute the proceeding for recovery and recover possession of the premises as a matter of course, because the heirs would not have any right to remain in occupation and would not enjoy the protection of the Act. This could never have been intended by the Legislature while framing the Rent Acts for affording protection to the tenant against eviction that the landlord would be entitled to recover possession, even if no grounds for eviction as prescribed in the Rent Acts are made out.

35. In our opinion, the view expressed by this Court in Ganapat Ladha case and the observations made therein which we have earlier quoted, do not lay down the correct law. The said decision does not properly construe the definition of the "tenant" as given in Section 5(11)(b) of the Act and does not consider the status of the tenant, as defined in the Act, even after termination of the commercial tenancy. In our judgment in Damadilal case this Court has correctly appreciated the status and the legal position of a tenant who continues to remain in possession after termination of the contractual tenancy. We have quoted at length the view of this Court and the reasons in support thereof. The view expressed by a seven Judge Bench of this Court in Dhanapal Chettiar case and the observations made therein which we have earlier quoted, lend support to the decision of this Court in Damadilal case. These decisions correctly lay down that the termination of the contractual tenancy by the landlord does not bring about a change in the status of the tenant who continues to remain in possession after the termination of the tenancy by virtue of the provisions of the Rent Act. A proper interpretation of the definition of tenant in the light of the provisions made in the Rent Acts makes it clear that the tenant continues to enjoy an estate or interest in the tenanted premises despite the termination of the contractual tenancy."

14) This Court, in H.C. Pandey (supra), has held as under:-

"4. It is now well settled that on the death of the original tenant, subject to any provision to the contrary either negativing 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 thereof. 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...."

15) In Mohd. Usman (supra), the High Court of Delhi has held as under:-

"5. I find no force in the contention raised by the learned counsel for respondent No.1. The provision regarding inheritance of tenancy in respect of Mahomedans and Hindus is not different. The Supreme Court in Gian Devi Anand's case (Supra) has no doubt observed that tenancy right which is inheritable devolves on the heirs under the ordinary law of succession. It only means that only those heirs who would be

entitled to inherit the property of a deceased tenant under the ordinary law of succession would be entitled to inherit even the right of tenancy after the death of the tenant. This position is amply clear from the fact that even under Section 19 of the Hindu Succession Act 1956 which prescribes the mode of succession of two or more heirs provides that if two or more heirs succeed together to the property of an intestate they shall take the property as tenants in common and not as joint tenants and in-spite of this the Supreme Court in H.C. Pandey's case (supra) has observed that the heirs of a deceased tenant succeed to the right of tenancy as joint tenants. The Supreme Court in H.C. Pandey's case (supra) has observed as follows:-

"It is now well settled that on the death of the original tenant, subject to any provision to the contrary either negativing 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 there. 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 was served on the respondent was sufficient. It seems to us that the view taken in Ramesh Chand Bose (AIR 1977 Allahabad 38) (supra) is erroneous where the High Court lays down that the heirs of the deceased tenant succeed as tenants in common. In the Transfer of Property Act notice served by the appellant on the respondent is a valid notice and therefore the suit must succeed."

6. In the light of the above observations of the Supreme Court there can be no doubt that even if one of the legal heirs is not a party to proceedings for eviction filed by the landlord against the legal heirs of the original tenant, that heir who has been left out cannot later on come forward and agitate his or her right in the tenancy. In the present case, I find that Surayya Begum who claims to be living in the same disputed premises alongwith other legal heirs after the death of Khalil Raza has chosen to file her objections after the whole round of litigation is over and after the other legal heirs have lost right upto the Supreme Court. It is thus clear that these objections are filed only to defeat the decree and delay the execution of the decree. In my view, therefore, even if Surayya Begum was not a party to the previous litigation between the parties she has no right to object to the execution of the decree and the Additional Rent Controller ought to have dismissed the objections on that ground alone.

7. In the circumstances, the petition is allowed. The order of the Additional Rent Controller Delhi dated 2 nd September, 1989 is set aside. The objections filed by respondent No.1 are dismissed. Respondent No.1 Mst.

Surayya Begum is however given on month's time to vacate the premises. No costs."

16) Further, in Surayya Begum (Mst) (supra), this Court has held as under:-

> "7. The learned advocates representing the decree holders in these two appeals have argued that when the tenancy rights devolve on the heirs of a tenant on his death, the incidence of tenancy remains the same as earlier enjoyed by the original tenant and it is a single tenancy which devolves on them. There is no division of the premises or of the rent payable, and the position as between the landlord and the tenant continues unaltered. Relying on Kanji Manji v.
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> Trustees of the Port of Bombay and borrowing from the judgment in H.C. Pandey case it was urged that the heirs succeed to the tenancy as joint tenants. The learned counsel for the appellants have replied by pointing out that as the aforesaid two decisions were distinguished by this Court in the latter case of Textile Association, it was not open to the landlords to support the impugned judgments by relying upon the earlier two cases.
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> 8. So far as Section 19 of the Hindu Succession Act is concerned, when it directs that the heirs of a Hindu dying intestate shall take his property as tenants-in-common, it is dealing with the rights of the heirs inter se amongst them, and not with their relationship with a stranger having a superior or distinctly separate right therein. The relationship between the stranger and the heirs of a deceased tenant is not the subject matter of the section. Similar is the situation when the tenant is a Mohammedan. However, it is not necessary for us to elaborate this aspect in the present appeals. The main dispute between the parties, as it appears from their respective stands in the courts below, is whether the heirs of the original tenants who were parties to the proceeding, represented the objector heirs also. According to the decree holder in Miss Renu Sharma's case their interest was adequately represented by their mother and brothers and they are as much bound by the decree as the named judgment debtors. In Surayya Begum's case respondent 1 has denied the appellant's claim of being one of the daughters of Khalil Raza, and has been contending that the full estate of Khalil Raza which devolved upon his heirs on his death was completely represented by respondents 2 to 9.

In other words, even if the appellant is held to be a daughter of Khalil Raza the further question as to whether her interest was represented by the other members of the family will have to be answered."

17) In Harish Tandon (supra), this Court has held as under:-

> "20. The Act with which we are concerned is a statute which purports to regulate the relationship between the landlord and the tenant and in many respects contains provisions for achieving that object which are different from the Transfer of Property Act. As such it was open to the framers of the Act to look to the interest of the tenant as well as the landlord and to prescribe conditions under which the tenant can continue to occupy a building and having contravened any of the conditions

prescribed shall be deemed to have ceased to occupy the building.

21. On the question as to whether any contravention by Ganpat Roy, one of the heirs of Sheobux Roy, will be a ground for eviction from the whole premises, the High Court was of the opinion that after the death of Sheobux Roy, his five sons became tenants in common and not joint tenants of the premises because of which contravention by one of the tenants shall not be a ground for eviction, so far the other co-tenants are concerned. In support of this finding, reliance was placed by the High Court on a judgment of this Court in Mohd. Azeem v.

Distt. Judge. From the facts of that case it appears that the original tenant had died in 1969 leaving behind a widow, three sons and a daughter. In connection with sub-section (3) of Section 12, after making reference to the Full Bench judgment of Allahabad High Court it was said:

"The Full Bench proceeded on the basis that the heirs become joint tenants and answered the main problem by saying that if any member of the family of such joint tenants built or acquired a house in vacant state the tenancy would be deemed to have ceased. In framing these questions for reference and in answering the referred questions, the definition of 'tenant' was lost sight of. All the heirs as normally reside with the deceased tenant in the building at the time of his death become tenants. The definition does not warrant the view that all the heirs will become a body of tenants to give rise to the concept of joint tenancy. Each heir satisfying the further qualification in Section 3(a)(1) of the Act in his own right becomes a tenant and when we come to Section 12(3) of the Act, the words 'the tenant or any member of his family' will refer to the heir who has become a tenant under the statutory definition and members of his family." However, this Court in the case of H.C. Pandey v. G.C. Paul in connection with the same Act said:

"It is now well settled that on the death of the original tenant, subject to any provision to the contrary either negativing 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."

22. The attention of the learned Judges constituting the Bench in the case of H.C. Pandey v. G.C. Paul was not drawn to the view expressed in the case of Mohd. Azeem v. Distt. Judge.

There appears to be an apparent conflict between the two judgments. It was on that account that the present appeal was referred to a Bench of three Judges. According to us, it is difficult to hold that

after the death of the original tenant his heirs become tenants-in-common and each one of the heirs shall be deemed to be an independent tenant in his own right. This can be examined with reference to Section 20(2) which contains the grounds on which a tenant can be evicted. Clause

(a) of Section 20(2) says that if the tenant is in arrears of rent for not less than four months and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand, then that shall be a ground on which the landlord can institute a suit for eviction. Take a case where the original tenant who was paying the rent dies leaving behind four sons. It need not be pointed out that after the death of the original tenant, his heirs must be paying the rent jointly through one of his sons. Now if there is a default as provided in clause (a) of sub-section (2) of Section 20 in respect of the payment of rent, each of the sons will take a stand that he has not committed such default and it is only the other sons who have failed to pay the rent. If the concept of heirs becoming independent tenants is to be introduced, there should be a provision under the Act to the effect that each of the heirs shall pay the proportionate rent and in default thereto such heir or heirs alone shall be liable to be evicted. There is no scope for such division of liability to pay the rent which was being paid by the original tenant, among the heirs as against the landlord what the heirs do inter se, is their concern. Similarly, so far as ground (b) of sub-section (2) of Section 20, which says that if the tenant has wilfully caused or permitted to be caused substantial damage to the building, then the tenant shall be liable to be evicted; again, if one of the sons of the original deceased tenant wilfully causes substantial damage to the building, the landlord cannot get possession of the premises from the heirs of the deceased tenant since the damage was not caused by all of them. Same will be the position in respect of clause (c) which is another ground for eviction, i.e., the tenant has without the permission in writing of the landlord made or permitted to be made, any such construction or structural alteration in the building which is likely to diminish its value or utility or to disfigure it. Even if the said ground is established by the landlord, he cannot get possession of the building in which construction or structural alterations have been made diminishing its value and utility, unless he establishes that all the heirs of the deceased tenant had done so. Clause (d) of sub-section (2) of Section 20 prescribes another ground for eviction — that if the tenant has without the consent in writing of the landlord, used it for a purpose other than the purpose for which he was admitted to the tenancy of the building or has been convicted under any law for the time being in force of an offence of using the building or allowing it to be used for illegal or immoral purposes; the landlord cannot get possession of the building unless he establishes the said ground individually against all the heirs. We are of the view that if it is held that after the death of the original tenant, each of his heirs becomes independent tenant, then as a corollary it has also to be held that after the death of the original tenant, the otherwise single tenancy stands split up into several tenancies and the landlord can get possession of the building only if he establishes one or the other ground mentioned in sub-section (2) of Section 20 against each of the heirs of original tenant. One of the well-settled rules of interpretation of statute is that it should be interpreted in a manner which does not lead to an absurd situation."

18) Further, in Uttam (supra), this Court has held as under:-

> "9. Also of some importance are Sections 19 and 30 of the said Act which read as follows:

> "19. Mode of succession of two or more heirs.—If two or more heirs succeed together to the property of an intestate, they shall take the property—
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> (a) save as otherwise expressly provided in this Act, per capita and not per stirpes; and
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> (b) as tenants-in-common and not as joint tenants.
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> * * *
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> 30. Testamentary succession.—Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him or by her, in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus.

Explanation.—The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or kavaru in the property of the tarwad, tavazhi, illom, kutumba or kavaru shall, notwithstanding anything contained in this Act, or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this section."

10. Before analysing the provisions of the Act, it is necessary to refer to some of the judgments of this Court which have dealt, in particular, with Section 6 before its amendment in 2005, and with Section 8. In Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum, the effect of the old Section 6 was gone into in some detail by this Court. A Hindu widow claimed partition and separate possession of a 7/24th share in joint family property which consisted of her husband, herself and their two sons. If a partition were to take place during her husband's lifetime between himself and his two sons, the widow would have got a 1/4th share in such joint family property. The deceased husband's 1/4th share would then devolve, upon his death, on six sharers, the plaintiff and her five children, each having a 1/24th share therein. Adding 1/4th and 1/24th, the plaintiff claimed a 7/24th share in the joint family property. This Court held: (SCC pp. 386-87, paras 6-7)

14. On application of the principles contained in the aforesaid decisions, it becomes clear that, on the death of Jagannath Singh in 1973, the proviso to Section 6 would apply inasmuch as Jagannath Singh had left behind his widow, who was a Class I female heir. Equally, upon the application of Explanation 1 to the said Section, a partition must be said to have been effected by operation of law immediately before his death. This being the case, it is clear that the plaintiff would be entitled to a share on this partition taking place in 1973. We were informed, however, that the plaintiff was born only in 1977, and that, for this reason, (his birth being after his grandfather's death) obviously no such share could be allotted to him. Also, his case in the suit filed by him is not that he is entitled to this share but that he is entitled to a 1/8th share on dividing the joint family property between 8 co-sharers in 1998. What has therefore to be seen is whether the application of Section 8, in 1973, on the death of Jagannath Singh would make the joint family property in the hands of the father, uncles and the plaintiff no longer joint family property after the devolution of Jagannath Singh's share, by

application of Section 8, among his Class I heirs? This question would have to be answered with reference to some of the judgments of this Court.

15. In CWT v. Chander Sen, a partial partition having taken place in 1961 between a father and his son, their business was divided and thereafter carried on by a partnership firm consisting of the two of them. The father died in 1965, leaving behind him his son and two grandsons, and a credit balance in the account of the firm. This Court had to answer as to whether credit balance left in the account of the firm could be said to be joint family property after the father's share had been distributed among his Class I heirs in accordance with Section 8 of the Act. This Court examined the legal position and ultimately approved of the view of four High Courts, namely, Allahabad, Madras, Madhya Pradesh and Andhra Pradesh, while stating that the Gujarat High Court view contrary to these High Courts, would not be correct in law. After setting out the various views of the five High Courts mentioned, this Court held:

> "21. It is necessary to bear in mind the Preamble to the Hindu Succession Act, 1956. The Preamble states that it was an Act to amend and codify the law relating to intestate succession among Hindus.
>
> 22. In view of the Preamble to the Act i.e. that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in Class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by Section 8 he takes it as karta of his own undivided family.

The Gujarat High Court view noted above, if accepted, would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under Section 8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in Section 8. Furthermore as noted by the Andhra Pradesh High Court that the Act makes it clear by Section 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today the property which devolved on a Hindu under Section 8 of the Hindu Succession Act would be HUF in his hand vis-à-vis his own son; that would amount to creating two classes among the heirs mentioned in Class I, the male heirs in whose hands it will be joint Hindu family property and vis-à-vis son and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in Class I of Schedule under Section 8 of the Act included widow, mother, daughter of predeceased son, etc.

23. Before we conclude we may state that we have noted the observations of Mulla's Commentary on Hindu Law, 15th Edn. dealing with Section 6 of the Hindu Succession Act at pp. 924-26 as well as Mayne Hindu Law, 12th Edn., pp. 918-19.

24. The express words of Section 8 of the Hindu Succession Act, 1956 cannot be ignored and must prevail. The Preamble to the Act reiterates that the Act is, inter alia, to 'amend' the law, with that background the express language which excludes son's son but includes son of a predeceased son cannot be ignored.

25. In the aforesaid light the views expressed by the Allahabad High Court, the Madras High Court 8, the Madhya Pradesh High Court, and the Andhra Pradesh High Court, appear to us to be correct. With respect we are unable to agree with the views of the Gujarat High Court noted hereinbefore."

17. In Bhanwar Singh v. Puran, this Court followed Chander Sen case and the various judgments following Chander Sen case. This Court held:

> "12. The Act brought about a sea change in the matter of inheritance and succession amongst Hindus. Section 4 of the Act contains a non obstante provision in terms whereof any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Act, ceased to have effect with respect to any matter for which provision is made therein save as otherwise expressly provided.
>
> 13. Section 6 of the Act, as it stood at the relevant time, provided for devolution of interest in the coparcenary property. Section 8 lays down the general rules of succession that the property of a male dying intestate devolves according to the provisions of the Chapter as specified in Class I of the Schedule. In the Schedule appended to the Act, natural sons and daughters are placed as Class I heirs but a grandson, so long as father is alive, has not been included.

Section 19 of the Act provides that in the event of succession by two or more heirs, they will take the property per capita and not per stirpes, as also tenants-in-common and not as joint tenants.

14. Indisputably, Bhima left behind Sant Ram and three daughters. In terms of Section 8 of the Act, therefore, the properties of Bhima devolved upon Sant Ram and his three sisters. Each had 1/4th share in the property. Apart from the legal position, factually the same was also reflected in the record-of-rights. A partition had taken place amongst the heirs of Bhima.

15. Although the learned first appellate court proceeded to consider the effect of Section 6 of the Act, in our opinion, the same was not applicable in the facts and circumstances of the case. In any event, it had rightly been held that even in such a case, having regard to Section 8 as also Section 19 of the Act, the properties ceased to be joint family property and all the heirs and legal representatives of Bhima would succeed to his interest as tenants-in-common and not as joint tenants. In a case of this nature, the joint coparcenary did not continue."

19) From a perusal of lease deed dated 15.11.1975, we find that the suit premises was let out jointly to late Shri Ishwar Chand Jain and Shri Ramesh Chand Jain, son of late Shri Ishwar Chand Jain. Thus, both of them were joint tenants and upon the death of Shri Ishwar Chand Jain, Respondent No. 1 inherited the tenancy as joint tenant only. Further, in view of a catena of decisions of this Court on the subject as well as the principles laid down in H.C. Pandey (supra), we are of the opinion that the High Court erred in holding that the decisions relied upon by learned senior counsel for the appellant are not applicable to the facts of the present case on the premise that in the given case itself the validity and binding nature of the notice given to one of the legal representatives of the

deceased tenant under Section 106 of the Transfer of property Act, 1882 on other legal representatives was determined only on the basis of the fact that they hold the tenancy as joint tenants and notice given to one means notice given to all.

Conclusion:-

> 20) We are of the view that in the light of H.C. Pandey (supra), the situation is very clear that when original tenant dies, the legal heirs inherit the tenancy as joint tenants and occupation of one of the tenant is occupation of all the joint tenants. It is not necessary for landlord to implead all legal heirs of the deceased tenant, whether they are occupying the property or not. It is sufficient for the landlord to implead either of those persons who are occupying the property, as party. There may be a case where landlord is not aware of all the legal heirs of deceased tenant and impleading only those heirs who are in occupation of the property is sufficient for the purpose of filing of eviction petition. An eviction petition against one of the joint tenant is sufficient against all the joint tenants and all joint tenants are bound by the order of the Rent Controller as joint tenancy is one tenancy and is not a tenancy split into different legal heirs. Thus, the plea of the tenants on this count must fail.
>
> 21) Even otherwise, the intervention at this belated stage of execution proceedings, in the fact and circumstances of the case, seems to be a deliberate attempt to nullify the decree passed in favour of the appellant herein as when Respondent No.1 filed objections under Section 47 Order XXI of the Code, he claimed to be in possession of the suit premises, however, he failed to produce any evidence except two rent receipts for the months of December, 1993 and January 1994 that too when the Respondent No. 1 in his objection petition filed in the execution proceedings of the eviction decree has himself admitted that the there exists a dispute between him and Respondent No. 2 and they had parted their ways.
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> 22) In light of the above discussion, the judgment and order dated 05.12.2013 passed by learned single Judge of the High Court is set aside. The judgment and order dated 30.11.2011 passed by the Additional Rent Controller is hereby restored.

The appeal is allowed.

.....J. (R.K. AGRAWAL) .....J. .

(ABHAY MANOHAR SAPRE) NEW DELHI;

APRIL 19, 2018.