

Supreme Court of India

K. V. Muthu vs Angamuthu Ammal on 17 December, 1996

Bench: Kuldeep Singh, S. Saghir Ahmad

CASE NO. :

Appeal (civil) 10538 of 1983

PETITIONER:

K. V. MUTHU

RESPONDENT:

ANGAMUTHU AMMAL

DATE OF JUDGMENT: 17/12/1996

BENCH:

KULDIP SINGH & S. SAGHIR AHMAD

JUDGMENT:

JUDGMENT 1996 Supp(10) SCR 188 The Judgment of the Court was delivered by S. SAGHIR AHMAD, J. Whether a "Foster Son" would be a "member of family" in relation to a landlord within the meaning of Section 2(6A) of the Tamil Nadu Building (Lease and Rent Control) Act, 1960 (for short, the Act) a the question involved in this appeal which is directed against the judgment of a Division Bench of the Madras High Court laying down that a "Foster Son" would, under a given set of facts, be a member of the landlord's family and thus overruled the Single Judge decision in *Hathibudi Anandar v. Govindan* (1981) 1 Madras Law Journal 250.

2. The appellant is the tenant in respect of a non-residential building since 1972 when it was owned by one Gnanaswambandam who on 10.5.1979 transferred the said building in favour of the respondent.

3, An application under Section 10(2)(i) and 10(3)(a)(iii), of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 was filed by the respondent for the eviction of the appellant on the ground inter alia of personal need and wilful default. It was pointed out by the respondent in her application that her husband Thiruvannamalai Bakthar who carried on time-shell business had, together with the respondent, brought up one Arunachala Bakthar as their son and member of their family. Thiruvan- namalai Bakthar died leaving behind a will dated 30th November, 1970 in which it was specified that Arunachala Bakthar who was the son of his real brother was brought up by him and it was through him that he was carrying on the lime-shell business. The will created a life estate in favour of the respondent in respect of the residential house and the remainder was vested in the children of Arunachala Bakthar. The will further recited that the lime-shell business would be carried on by the respondent and Arunachala Bakthar but after the death of the respondent, Arunachala Bakthar alone would carry on the business. The premises in occupation of the appellant were said to be required for carrying on the lime-shell business for herself and for her son Arunachala Bakthar.

4. The appellant contested the application and raised the plea that Arunachala Bakthar was not the natural son of the petitioner and consequently he would not be a "member of the family" within the meaning of Section 2(6A) of the Act. The petition, it was contended, was not maintainable and he was not liable to be evicted particularly as he had not committed wilful default in the payment of rent.

5. It was found by the Rent Controller that Arunachala Bakthar was the son of deceased Thiruvannamalai Bakthar and, therefore, the petition was maintainable for the eviction of the appellant from the premises in question on the ground of bona fide need of the resident herself and that of Arunachala Bakthar. He consequently allowed the petition on the ground of bona fide need, though it was found by him that the appellant had not committed wilful default in payment of rent.

6. The appellate authority, however, following the decision of the Single Judge of the Madras High Court in *Hathibudi Anandar v. Govindan*, (1981) 1 Madras Law Journal 250 reversed the decision of the Rent Controller and held that Arunachala Bakthar was merely a foster son of Thiruvannamalai Bakthar and, therefore, he would not be a member of this family,

7. The respondent challenged this decision in the High Court where a learned Single Judge (S. Mohan, J., as he then was) doubted the decision in *Hathibudi Anandar v. Govindan*, (1981) 1 Madras Law Journal 250 and referred the matter to a Division Bench for decision on the question whether the foster son would be a member of the family of the landlord within the meaning of Section 2(6A) of the Act. The Division Bench reversed the decision of the Single Judge and held that a "Foster Son" would be a member of the family and, therefore, the petition filed by the respondent for the eviction of the appellant from the premises in question on the ground of bona fide need of herself and that of her "Foster Son" Arunachala Bakthar was maintainable. It is against this decision that the appellant has come up in appeal before this Court.

8. Learned counsel for the appellant has contended that the "Family" has to be given the meaning which is commonly understood by an ordinary man and, therefore, "Family" would include only natural sons and not "Foster Son". Learned counsel for the respondent, on the contrary, contends that since the definition of "Family" as set out in the Act is an artificial definition, its natural or common meaning cannot be adopted. "Family", it is contended, is a word of great flexibility and has to be interpreted in the context of the Act with the result that not only those who are related by blood or marriage, but others also would be included in it

9. Section 2(6A) provides as under :

"2 (6-A), "member of his family" in relation to a landlord means his spouse, son, daughter, grand-child or dependent parent."

10. Apparently, it appears that the definition is conclusive as the word "means" has been used to specify the members, namely, spouse, son, daughter, grand-child or dependent parent, who would constitute the family. Section 2 of the Act in which various terms have been defined, open with the words "in this Act, unless the context otherwise requires" which indicates that the definitions, as for

example, that of "Family", which are indicated to be conclusive may not be treated to be conclusive if it was otherwise required by the context. This implies that a definition, like any other word in a statute, has to be read in the light of the context and scheme of the Act as also the object for which the Act was made by the Legislature.

11. While interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not repugnant to the context, It should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the purpose of the Act has to be ignored and not accepted.

12. Where the definition or expression, as in the instant case, is preceded by the words "unless the context otherwise requires", the said definition set out in the Section is to be applied and given effect to but this rule, which is the normal rule may be departed from if there be something in the context to show that the definition could not be applied.

13. This Court in *K. Balakrishna Rao & Ors. v. Haji Abdulla Sait & Ors.*, [1980] 1 SCC 321 while considering the definition clause of this Act which is under our consideration, held :

"A definition clause does not necessarily in any statute apply in all possible contexts in which the word which is defined may be found therein. The opening clause of section 2 of the principal Act itself suggests that any expression defined in that section should be given the meaning assigned to it therein unless the context otherwise requires."

14. In its ordinary and primary sense, the term "Family" signifies the collective body of persons living in one house or under one head or manager or one domestic government. In its restricted sense, "Family" would include only parents and their children. It may include even grand-children and all the persons of the same blood living together. In its broader sense, it may include persons who are not connected by blood depending upon the context in which the word is used.

15. There is a consensus among the High Courts in India that the word "Family" is a word of great flexibility and is capable of different meanings.

16. In *Ram Pershad Singh v. Mukand Lal*, AIR (1952) Punjab 189, nephews who were brought up by the landlord and were set up in business by him and were also married by him, were held to be member of the family. The Calcutta High Court in *Puspa Lata Debi v. Dinesh Chandra Das*, 85 Cal. LJ. 74, in *Syed Shah Maidal Islam & Ors, v, Commr. of Wakfs & Ors.*, AIR (1943) Cal. 635 and again in *Sukumar Guha v. Naresh Chandra Ghosh & Aw.*, AIR (1968) Cal. 49; the Madras High Court in *Asha Bibi & Ors. v. Nabissa Sahib & Ors.*, AIR (1957) Madras; the Bombay High Court in *Mst. Ramubai v. Jiyaram Sharma*, AIR (1964) Bombay 96; the Delhi High Court in *Govind Das & Ors. v. Kuldeep Singh*, AIR (1971) Delhi 151 and again in *Abdul Hamid & Anr. v. Nur Mohd.*, AIR (1976) Delhi 328 have all held that the word "Family" is a flexible word and it may, in certain circumstances, specially in the context in which it is used, may include persons who are not directly related by blood.

17. This Court in *Corporation of the City of Nagpur v. The Nagpur Handloom Cloth Market Co. Ltd.*, AIR (1963) SC 1192 while interpreting the word "Family" observed as under : "But the expression 'family' has according to the context in which it occurs, a variable connotation. It does not in the setting of the rules postulate the existence of relationship either of blood or by marriage between the persons residing in the tenement Even a single person may be regarded as a family, and a master and servant would also be so regarded."

18. It was further observed as under :

"The expression 'family' must therefore take colour from the expression 'occupy' used in the same rule. In our view the expression 'family' in the context in which it occurs, means no more than a person or a group of persons."

19. It is in the background of the above discussion relating to the cases decided by various High Courts and this Court that it is to be seen whether a "Foster Son" would be covered by the word "Family" as defined in the Act.

20. "Son" as understood in common parlance means as natural son born to a person after marriage. It is the direct blood relationship which is the essence of the term in which "Son" is usually understood, emphasis being on legitimacy. In legal parlance, however, "Son" has a little wider connotation. It may include not only the natural son but also son's son, namely, the grand child, and where the personal law permits adoption, it also include an adopted son.

21. Section 3(57) of the General Clauses Act defines "Son" as under :

"son" in the case of any one whose personal law permits adoption, shall include an adopted son."

22. Relying upon this definition, the Lahore High Court in *In re Divi Dita* AIR (1931) Lahore 661, held that where the personal law of the parties permits adoption, the word "Son" will include an adopted son. In *parties Narayan singh v. Mahabir Prasad Tiwari*, 48 Indian Appeals 86, the Privy Council held that 'Sons' in Mitakshara Chapter II 6(1) include a grand son. In the ancient Hindu Law, twelve sons are mentioned by the truth-seeing Sages all of whom need not be mentioned here. The attempt only is to indicate that the terms "Son" itself is a flexible term and may not be limited to the direct descendant, Its true meaning, like the term "Family" discussed above, will depend upon the context in which it is used. Even illegitimate son may be treated as legitimate, as for example, the 'Son' referred to in Section 16 of Hindu Marriage Act, as originally enacted.

23. Coming now to "Foster Son", it may be pointed out that a "Foster Son" is a son who is not the real son or direct descendant of a person after his marriage.

24. In Shorter Oxford Dictionary, "Foster Son" is defined as "one brought up as a son though not a son by birth." The word "Foster", in the same dictionary, is indicated to mean, to supply with food; to nourish, feed, support; to bring up with parental care; to nurse, tend with care to grow.

25. Foster Brother" is a male child nursed at the same breast as, or reared with, another of different parentage. "Foster Father" is described as one who performs the duty of a father to another's child. "Foster Mother" is indicated to mean a woman who nurses and brings up another's child, either as an adoptive mother or as a nurse, while "Foster Sister" means a female child nursed at the same breast as, or reared with, another of different parentage.

26. These definitions indicate that a "Foster Child" need not be the real legitimate child of the person who brings him up. He is essentially the child of another person but is nursed, reared and brought up by another person as his own son.

27. If a child comes to a person or is found by that person as forlorn child or the parents of that child, may be, on account of their poverty or their family circumstances, bring that child to the other person and request him to bring up that child which is accepted by that person and such child is brought up from the infancy as the own son by that person who loves that child as his own, nourishes and brings him up, looks after his education in the school, college or university and bears all the expenses, such child has to be treated as the son of that person particularly if that person holds the child out as his own. Care, therefore, in rearing up the child need not always be parental. It can be even that of a "Foster Father", In such a situation, the son so brought up would be the "Foster Son" of that person and since the devotion with which he was brought up, the love and care which he received from that person were like those which that person would have given to his real son, the "Foster Son" would certainly be a member of the family.

28. It would be appropriate at this stage to refer to a case from the United States, namely, *Re Norman's Estate* (1940) 295 NW 63 which was decided by the Supreme Court of Minnesota in which the dictionary definition of "Foster Mother" or "father" as a woman or man who had performed the duties of a parent to a child of another by rearing the child as the own child was accepted, "Foster Child" in that case was defined as one who has been cared for by a Foster Parent".

29. This decision was considered by the Canadian Court in *Re Page* (1973) 3 OR 903 or 903 (Oat SC) in which the learned Judge referring to the above definition observed as under:

This definition, which commended itself to Minnesota Court, also commends itself to me."

30. In England, Fosterage is now regulated by statutory laws, In Bromley's "Family Law", 7th Edition, it is indicated as under :

"Both at common law and under the Children and Young Persons Act, 1933 there will be a duty to afford protection. Although there is no common law duty to maintain the child, the person with control will be criminally liable under the Children and Young Persons Act 1933 if he wilfully fails to provide him with adequate food, clothing, medical aid or lodging. Similarly, the Education Act 1944 places him under a duty to see that the child receives full-time education. So long as no one else claims the care and control of the child, the person who actually has it will be clearly entitled to retain it; if this is disputed, the court must be guided by the child's welfare in determining in whose favour to make an order."

Bromley in his treatise also indicates that if anyone other than a relative, guardian or custodian, undertakes the care and maintenance of a child, he will be subject to the provisions of the Foster Children Act, 1980. Fosterage here is essentially a matter of personal inclination, liking and devotion towards a child by those, specially, who being childless adopt or otherwise rear up a child.

31. From the above, it would appear that it is not in every case that a son who is not the real son of a person would be treated to be a member of family of that person but would depend upon the facts and circumstances of a particular case.

32. Analysing the facts of this case in the light of the principles enunciated above, it will be seen that Arunachala Bakthar is the brother's son of the Appellant's husband who, therefore, was related to the appellant's husband by blood and was his heir not only under the old Mitakshara Law (as brother's son) but also under the Hindu Succession Act, 1956 as a class-II heir. Arunachala Bakthar was brought up by the appellant and her husband and was living all along with them. He apparently acted as a devoted son to the appellant's husband and helped him in all possible ways including the business which he carried on. Appellant's husband acted also as a devoted father to Arunachala Bakthar in whose favour he also executed a will and after reciting therein that Arunachala Bakthar was brought up by him, he bequeathed his business jointly to him and the appellant specifying further that after the death of the appellant, the business shall be carried on by Arunachala Bakthar, Appellant's husband also, significantly, did not bequeath the residential house absolutely in favour of the appellant but created only a life estate therein for her. The remainder was bequeathed to the children of Arunachala Bakthar.

33. In view of the above facts and circumstances, Arunachala Bakthar was clearly a member of the family of the appellant's husband within the meaning of Section 2(6A) of the Act and consequently, the appellant could well file an application for eviction of the respondent from the premises in question not only for her need but also for the need of her "Foster Son", Arunachala Bakthar,

34. We do not find any infirmity in the judgment passed by the Madras High Court and dismiss the appeal with costs which is quantified at Rs. 15, 000,