Supreme Court of India
Shri Harish Tandon vs The Addl.District Magistrate, ... on 5 January, 1995
Equivalent citations: 1995 AIR 676, 1995 SCC (1) 537
Author: S N.P.
Bench: Singh N.P. (J)

PETITIONER:
SHRI HARISH TANDON

Vs.

RESPONDENT:
THE ADDL.DISTRICT MAGISTRATE, ALLAHABAD, U.P. AND OTHERS.

DATE OF JUDGMENT05/01/1995

BENCH:
SINGH N.P. (J)
BENCH:
SINGH N.P. (J)
SAWANT, P.B.
ANAND, A.S. (J)

CITATION:
1995 AIR 676 1995 SCC (1) 537
JT 1995 (1) 290 1995 SCALE (1)65

ACT:

HEADNOTE:

JUDGMENT:

1. This appeal has been filed against an order dated 21.9.1992 passed by the Allahabad High Court on a Writ Petition filed on behalf of Respondent Nos.5 to 7. By the impugned order, the High Court has quashed orders dated 13.8.1981 and 18.11.1981 passed by the Rent Controller declaring a vacancy under Section 12(2) read with Section 12(4) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as 'the Act').

2. The dispute is in respect of a shop bearing Municipal No.24-34 situated at Mahatma Gandhi Marg, Civil Lines Mar-

ket, Allahabad. In the year 1937, the shop was let out to late Sheobux Roy by the grand father of the appellant. The said Sheobux Roy started a business in the name and style of "M/s. B.N. Rama & Co.". Sheobux Roy died on 3.2.1941 leav- ing behind five sons namely Khush Bakht Roy, Sant Bux

Roy, Sampat Roy, Ganpat Roy and Sheopat Roy. In the year 1943, there was a family partition amongst the sons of Sheobux Roy and the shop in dispute fell to the share of Sampat Roy, Ganpat Roy and Sheopat Roy. The other two sons ceased to have any interest or concern with the shop in question. Sampat Roy, Ganpat Roy and Sheopat Roy were carrying on their business in the name and style of "M/s. B.N. Rama & Co.". In the year 1976, Ganpat Roy and his son Ramesh Roy constituted a new partnership firm with one Swarup Kailash, son-in-law of Ganpat Roy under the name and style of "M/s. B.N. Rama & Co.(Textiles)" for carrying on the business in textile, in the premises in question. In the year 1979, the appellant filed suit for eviction of the respondent-tenants (hereinafter referred to as 'the respondents') on the ground that there was a sub-letting of the premises by induction of Swarup Kailash, the son-in-law of Ganpat Roy as a partner for carrying on the business in the shop in dispute.

3. In March 1981, one Ramesh Nath Kapur and Radhey Shyam filed an application for allotment of the said premises to them, on the ground that there was a deemed vacancy of the premises. The Rent Controller and Eviction Officer by his order dated 13.8.1981 held that there was a deemed vacancy in respect of the said premises and he directed that the said vacancy be notified. A petition was filed by the respondents on 11.9.1981 making prayer to recall the aforesaid order dated 13.8.1981 and to give them permission to file objections and to contest the proceed- ings. That petition was allowed by the Rent Controller and Eviction Officer by his order dated 13.9.198 1. The Rent Controller and Eviction Officer by his order dated 18.11.1981 negatived the contention of the respondents that there was no deemed vacancy in respect of the premises in question. Thereafter a Writ Application was filed on behalf of the respondents which was dismissed by the High Court saying that it was not maintainable. The Respondents filed a Special Leave Petition before this Court against the aforesaid order of the High Court. This Court allowed their appeal on 29.3.1985 and directed the High Court to rehear the Writ Petition filed by the respondents on merits. It was further said by this Court that pending disposal of the writ petition before the High Court, there shall be a stay of further proceedings in respect of the allotment of the premises in question and the respondents shall not be dispossessed from the same.

4. The Writ Petition, aforesaid, was ultimately allowed by the impugned order dated 21.9.1992 by the High Court on the finding that after the death of Sheobux Roy on 3.2.1941, his sons became tenants in common and not joint tenants. As such for any contravention made by Ganpat Roy one of the sons of Sheobux Roy by inducting his son-in-law as a partner of the firm shall not result into deemed vacancy of the whole premises under the provisions of the Act. It is this finding which has been put in issue before us.

5. In order to appreciate the controversy, it is necessary to refer to certain provisions of the Act. Section 3(g) defines 'family' :

> "Section 3(g) "family", in relation to a landlord or tenant of a building, means, his or her
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> (i) spouse,

(ii) male lineal decedents,

(iii) such parents, grandparents and any unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant, as may have been normally residing with him or her, and includes, in relation to a landlord, any female having a legal right of residence in that building;"

Section 12 of the Act prescribes the conditions under which deemed vacancy shall occur. The relevant part thereof is as follows :

Section 12 "Deemed vacancy of building in certain cases (1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if-

(a) he has substantially removed his effects therefrom, or

(b) he has allowed it to be occupied by any person who is not a member of his family, or

(c) in the case of a residential building, he as well as members of his family have taken up residence, not being temporary residence, elsewhere.

(2) In the case of non-residential building, where a tenant carrying on business in the building admits a person who is not a member o f his family as a partner or a new partner, as the case may be, the tenant shall be deemed to have ceased to occupy the building.

(3) In the case of a residential building, if the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, notified area or town area in which the building under tenancy is situate, he shall be deemed to have ceased to occupy the building under his tenancy:

Provided that if the tenant or any member of his family had built any such residential building before the date of commencement of this Act, then such tenant shall be deemed to have ceased to occupy the building under his tenancy upon the expiration of a period of one year from the said date.

Explanation For the purposes of this sub-

section -

(a) a person shall be deemed to have otherwise acquired a building, if he is oc- cupying a public building for residential purposes as a tenant, allottee or licensee;

(b) the expression "any member of family", in relation to a tenant, shall not include a person who has neither been normally residing with nor is wholly dependent on such tenant.

.....

(4) Any building or part which a landlord or tenant has ceased to occupy within the meaning of sub-section (1), or sub-section (2), or sub-section (3), subsection (3-A) or sub- section (3-B), shall, for the purposes of this Chapter, be deemed to be vacant.

In view of sub-section (2) of Section 12, in case of non- residential building, if the tenant admits a person who is not a member of his family as a partner, the tenant shall be deemed to have ceased to occupy the building and by virtue of sub-section (4) of Section 12, such building shall be deemed to be vacated.

6. Section 25 enjoins that no tenant shall sub-let the building under his tenancy and it also prescribes as to what shall amount to a deemed sub-letting "25. Prohibition of sub-letting (1) No tenant shall sub-let the whole of the building under his tenancy.

(2) The tenant may with the permission in writing of the landlord and of the District Magistrate, sub-let a part of the building. Explanation For the purposes of this section

(i) where the tenant ceases, within the meaning of clause (b) of sub-section (1) of sub-

section (2) of Section 12, to occupy the building or any part thereof, he shall be deemed to have sub-let that building or part;

(ii) lodging a person in a hotel or a lodging house shall not amount to subletting. "

7. In view of explanation (i) of Section 25, where the tenant is deemed to have ceased to occupy the building under sub-section (2) of Section 12 aforesaid, he shall be deemed to have sub-let that building or part thereof Once a tenant carrying on business in a non-residential building, admits a person who is not a member of his family as a partner, the said tenant shall be deemed to have ceased to occupy the building and by operation of the explanation (i) of Section 25, it shall be deemed that such tenant has sub-let that building or part thereof, which shall be a ground for eviction of such tenant because of section 20(2)(e) which specifically says that a suit for eviction of a tenant from building after determination of his tenancy may be instituted on the ground "that the tenant has sub-let, in contravention of the provisions of Section 25, or as the case may be, of the old Act the whole or any part of the building".

8. It may be mentioned that before this Court, there was no dispute in respect of the facts stated above. It is an admitted position that the premises in question were let out to Sheobux Roy who died in the year 1941 leaving behind five sons. Later only three of his sons Ganpat Roy, Sampat Roy and Sheopat Roy carried on their business in the said premises. It is also admitted that on 19.8.1976, Ganpat Roy inducted his son-in-law, Swarup Kallash, as one of the partners in the firm "M/s. B.N. Rama & Co. (Textiles)" for carrying on the business in textile in the disputed pre- mises. The controversy between the parties is in respect of

(i) as to whether in the facts and circumstances of the case, there shall be a deemed vacancy because of subsection (2) and sub-section (4) of Section 12; (ii) whether because of explanation (i) of Section 25, it shall amount to sub- letting within the meaning of Section 20(2)(e) a ground for eviction of the respondents; (iii) even if it is held that because of the induction of Swarup Kailash as a partner in the firm, which amounted to a sub-letting within the meaning of Section 25 of the Act, whether the whole premises shall be deemed to be vacant.

9. It cannot be disputed that a son-in-

law shall not be deemed to be a member of the family within the definition as given in the Act under Section 3(g). Section 12(2) says that in case of non-residential building, where tenant admits a person who is not a member of his family as a partner, the tenant shall be deemed to have ceased to occupy the building. By induction of Swarup Kailash, the son-in-law of Ganpat Roy, as a partner in the firm, sub-section (2) of Section 12 is attracted.

10. According to the learned counsel for the respondent tenants, the object of sub-section (2) is to exclude and restrict the unauthorised induction of persons as partners in a firm with primary object to pass on the tenancy to such persons after their induction. In other words, sub-section (2) of Section 12 imposes a restriction on the tenant in sub-letting the premises or part thereof, by the device of inducting any person as a partner in the business. As such, before it is held that the induction of Swarup Kailash amounted to sub-letting of the premises, a finding has to be recorded that the object of inducting Swarup Kailash as a partner of the firm was, to actually and factually sub-let the premises to him. His induction as a partner was a design and device to circumvent the consequence provided under Section 20(2)(e) ejectment from the premises.

11. It is true that the primary object of sub-section (2) of Section 12 appears to be to check and restrict sub- letting of premises or part thereof by the original tenant by inducting any person who is not a member of the family within the meaning of the Act as a partner in the business. But the special feature of sub-section (2) of Section 12 is that there is a deeming clause in the said subsection. If the said sub-section ha provided that where a tenant carrying on business in the building admits a person who is not a member of his family as a partner, it shall amount to sub-letting of the premises, then there was scope for investigation and examination as to whether, in the process of inducting such person as a partner in the business in fact there has been a sub-letting of the premises. But sub- section (2) says in clear and unambiguous words that once a person who is not a member of the family is admitted as a partner in the business by the tenant, 'the tenant shall be deemed to have ceased to occupy the building'.

12. On behalf of the respondents, it was urged that the expression 'deemed' occurring in sub-sections (2) and (4) of Section 1.2 as well as in the explanation (i) of Section 25 should not be read as conclusive. It should be read as 'deemed until the contrary is proved. Reference was made to the cases Gray v. Kerslake, (1957) Vol.II Dominion Law Reports (2nd Series) page 225 (at p. 239); Robert Batcheller & Sons. Limited v. Batcheller, (1945) 1 Chancery Division 169; and Spencer v. Kennedy (1926) 1 Chancery Division 125, where it was observed that if the word 'deemed' is held to be conclusive, then it shall amount to imputing to the Legislature the intention of requiring the

Court to hold as a fact something directly contrary to the true fact. It was also said that such deemed clauses should be read to mean as required by the statute, until the contrary is proved.

13. The role of a provision in a statute creating legal fiction is by now well settled. When a Statute creates a legal fiction saying that something shall be deemed to have been done which in fact and truth has not been done, the Court has to examine and ascertain as to for what purpose and between what persons such a statutory fiction is to be resorted to. Thereafter full effect has to be given to such statutory fiction and it has to be carried to its logical conclusion. In the well known case of East End Dwellings Co. Ltd. v. Finbsbury Borough Council, (1952) A.C. 109(B), Lord Asquith while dealing with the provisions of the Town and County Planning Act, 1947, observed :

> "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative, state of affairs had in fact existed, must inevitably have flowed from or accompanied it..... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

That statement of law in respect of a statutory fiction is being consistently followed by this Court. Reference in this connection may be made to the case of State Bombay v. Pandurang Vinayak and others, AIR 1953 SC 244 = 1953 SCR

773. From the facts of that case it shall appear that Bombay Building (Control on Erection) Ordinance, 1948 which was applicable to certain areas mentioned in the schedule to it, was extended by a notification to all the areas in the province in respect of buildings intended to be used for the purposes of cinemas. The Ordinance was repealed and replaced by an Act which again extended to areas mentioned in the schedule with power under sub-section (3) of Section 1 to extend its operation to other areas. This Court held that the deemed clause in Section 15 of the Act read with Section 25 of the Bombay General Clauses Act has to be given full effect and the expression 'enactment' in the Act will cover the word 'Ordinance' occurring in the notification which had been issued. In that connection it was said :

> "The corollary thus of declaring the provisions of S.25, Bombay General Clauses Act, applicable to the repeal of the ordinance and of deeming that ordinance an enactment is that wherever the word "ordinance" occurs in the notification, that word has to be read as an enactment. "

14. In the case of Chief Inspector of Mines and another etc. v. Karani Chand Thapar etc., AIR 1961 SC 838 = 1962(1) SCR 9, it was said:

> "Were these regulations in force on the alleged date of contravention? Certainly, they were, in consequence of the provisions of S.24 of the General Clauses Act. The fact that these regulations were deemed to be regulations made under the 1952 Act does

> not in any way affect the position that they were laws in force on the alleged date of contravention. The argument that as they were "regulations" under the 1952 Act in consequence of a deeming provision, they were not laws in force on the alleged date of contravention is entirely misconceived."

15. In the case of M/s J.K Cotton Spinning and Weaving Mills Ltd. and another v. Union of India and others, AIR 1988 SC 191 = 1988(1) SCR 700, it was said:

> "It is well settled that a deeming provision is an admission of the non-existence of the fact deemed. Therefore, in view of the deeming provisions under Explanations to Rr.9 and 49, although the goods which are produced or manufac-
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> tured at an intermediate stage and, there- after, consumed or utilised in the integrated process for the manufacture of another commodity is not actually removed shall be construed and regarded as removed. The Legislature is quite competent to enact a deeming provision for the purpose of assuming the existence of a fact which does not really exist."

16. Recently in the case of M. Venugopal v. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh, & Anr., JTF 1994(1) SC 281 = 1994 (2) SCC 323 after referring to the case of East End Dwellings Co. Ltd. v. Finsbury Borough Council (supra) it was said that when one is bidden to treat an imaginary state of affairs as real, he must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, must inevitably have flowed.

17. When sub-section (2) of Section 12 provides that whenever a tenant carrying on business in a building admits a person, who is not a member of his family, as a partner, the tenant shall be deemed to have ceased to occupy the building, full effect has to be given to the mandate of the Legislature. There is no escape from the conclusion that such tenant has ceased to occupy the building. No discretion is left to the Court to enquire or investigate as to what was the object of such tenant while inducting a person as partner who was not the member of his family. It can be said that the aforesaid statutory provision requires the Court to come to the conclusion that by the contravention made by the tenant, such tenant has ceased to occupy the building. The framers of the Act have not stopped only at the stage of Section 12(2) but have further provided in Section 25, Explanation (i) another legal fiction saying that where the tenant ceases to occupy the building within the meaning of 11 sub-section (2) of Section 12 'he shall be deemed to have sub-let that building or part'. In view of the three deeming clauses introduced in sub-section (2) of Section 12, sub-section (4) of Section 12 and Explanation (i) to Section 25, no scope has been left for the Courts to examine and consider the facts and circumstances of any particular case, as to what was the object of admitting a person who is not the member of the family, as partner and as to whether, in fact, the premises or part thereof have been sub-let to such person.

18. It was then urged that if such strict interpretation is given to sub-section (2) of Section 12, then similar interpretation should be given to Section 12(1)(b) and to Section 12(3) of the Act which

prescribe other conditions under which the tenant shall be deemed to have ceased to occupy the building under his tenancy. It was pointed out that sub-Section (1)(b) of Section 12 says that a landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if he has allowed it to be occupied by any person who is not a member of his family. According to the learned counsel for respondents if the daughter-in-law or son-in-law of the landlord or tenant comes to reside in the building in occupation of such landlord or tenant, then it shall be deemed to have ceased to be in occupation of such landlord or tenant, which shall lead to an absurd result. Clause (b) of sub-section (1) of Section 12 shall not be applicable to such occupation by daughter-in-law or son-in-law or even outsider with the ten- ant himself The words 'allowed' and 'occupy' are significant. The landlord or the tenant, as the case may be, shall be deemed to have ceased to occupy the building only if he has allowed it to be occu- pied by any person who is not a member of his family. The words "allowed to be occupied" indicate that the possession of such building has been given to a person who is not a member of the family. It shall not be attracted when any person who is not a member of the family resides in such building either along with the landlord or the original tenant. If the landlord or the tenant allows any person, who is not a member of the family within the meaning of the Act to occupy the premises, with the object that such person shall occupy such premises in his own rights, in that event, clause (b) of sub-section (1) of Section 12 shall be attracted.

19. So far as sub-section (3) of Section 12 is concerned, it says that in case of residential building, if the tenant or any member of his family builds or otherwise acquires, in a vacant state or gets vacated a residential building in the same city, municipality, notified area or town area, in which the building under tenancy is situate, the tenant "shall be deemed to have ceased to occupy the building under his tenancy". It was submitted that if full effect is given to the deeming clause, then in a house where the tenant was living with his four sons, one of his sons getting any accommodation in the same city or town, the tenant along with his remaining three sons have to be evicted which shall lead to an absurd result. Although we are not concerned in the present case with the scope of sub-section (3) of Section 12, but in order to appreciate the submission made on behalf of the respondents, we may point out that sub- section (3) of Section 12, does not conceive that if one of the sons living with the tenant, who is not wholly dependent on such tenant, acquires any other residential building in the same city or town, then even the original tenant shall be deemed to have ceased to occupy the building in question. This is apparent from Explanation (b) to said sub-section (3) which says:

> "the expression "any member of family", in relation to a tenant, shall not include a person who has neither been normally residing with nor is wholly dependent on such tenant."

In view of the explanation any member of the family mentioned in sub-section (3) shall not include a person who has neither been normally residing with nor is wholly dependent on such tenant. As such, if a son of the tenant who is not wholly dependent on such tenant acquires or gets any residential building in the same city or town, there is no question of the tenant deeming to have ceased to occupy the building under sub-section (3) of Section 12.

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 Properties 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. District Judge, Aligarh and Ors., 1985(3) SCR 906. 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 s.3(a)(1) of the Act in his own right becomes a tenant and when we come to s. 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."

22. However, this Court in the case of H.C. Pandey v. G.C. Paul, 1989(3) SCC 77, 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."

23. The attention of the learned Judges constituting the Bench in the case of H.C. Pandey v. G.C. Paul (supra) was not drawn to the view expressed in the case of Mohd. Azeem v. District Judge, Aligarh (supra). 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 tenant 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 subsection (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.

24. It appears to us, in the case of H. C. Pandey v. G. C. Paul (supra) it was rightly said by this Court that after the death of the original tenant, subject to any provision to the contrary, the tenancy rights devolve on the heirs of the deceased tenants jointly. 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 and there is

no division of the premises or of the rent payable therefor and the heirs succeed to the tenancy as joint tenants.

25. In the case of Smt.Gian Devi Anand v. Jeevan Kumar and others, 1985 (Suppl.) SCR 1, the Constitution Bench of this Court in connection with Delhi Rent Control Act, 1958 said:

> "The heirs of the deceased tenant in the absence of any provision in the Rent Act to the contrary will step into the position of the deceased tenant and all the rights and obligations of the deceased tenant including the protection afforded to the deceased tenant under the Act will devolve on the heirs of the deceased tenant. As the protection afforded by the Rent Act to a tenant after determination of the tenancy and to his heirs on the death of such tenant is a creation of the Act for the benefit of the tenants, it is open to the Legislature which provides for such protection to make appropriate provisions in the Act with regard to the nature and extent of the benefit and protection to be enjoyed and the manner in which the same is to be enjoyed. If the Legislature makes any provision in the Act limiting or restricting the benefit and the nature of the protection to be enjoyed in a specified manner by any particular class of heirs of the deceased tenant on any condition laid down being fulfilled, the benefit of the protection has necessarily to be enjoyed on the fulfilment of the condition in the manner and to the extent stipulated in the Act."

26.The framers of the Act have clearly expressed their intention in Sections 12, 20 and 25 while protecting the tenant from eviction except on the grounds mentioned in Section 20, that after the death of the original tenant his heirs will be deemed to be holding the premises as joint tenants, and for any breach committed by any of such joint tenants, all the heirs of the original tenant have to suffer. They cannot take a plea that unless the grounds for eviction mentioned in sub-section (2) of Section 20 are established individually against each one of them, they cannot be evicted from the premises in question.

27.It was then submitted that although Swarup Kailash, the son-in-law of Ganpat Roy may not be held to be a member of the family within the meaning of the definition given in Section 3(g), nonetheless he shall be deemed to be a member of the family as the expression 'family' is generally understood, and by admitting a son-in-law or daughter-in-law as a partner, it shall not amount to sub-letting within the meaning of the Act. It was pointed out that Section 3 opens with the words "In this Act, unless the context otherwise requires" and as such the definition of the family should not be strictly construed as given in Section 3(g) and in the context of the present case a wider interpretation to the expression 'family' should be given so as to include even the sons-in-law and daughters-in-law. In this connection, reliance was placed on the judgment of this Court in the case of Pushpa Devi and others v. Milkhi Ram, 1990(2) SCC 134. As has already been pointed out that in the Act with which we arc concerned, wherever the expression 'member of the family' has been used, it is consistent with the definition of 'family' given in Section 3(g) and there is no scope for interpreting that expression in a different manner in connection with subsection (2) of Section 12 of the Act. Once the finding of the High Court that after the death of Sheobux Roy, his sons became tenants in common instead of joint tenants, is reversed for the reasons mentioned above, the result

will be that it has to be held that because of the admission of Swamp Kailash, the son-in- law of Ganpat Roy, as a partner in the business, there has been a deemed vacancy of the premises within the meaning of subsections (2) and (4) of Section 12 and it shall amount to sub-letting within the meaning of Section 25, Explanation (i), which is a ground for eviction under subsection 2(e) of Section 20 of the Act. The judgment in Mohd Azeem's case, does not lay down the correct law and on the other hand we hold that H.C.Pandey's case (supra) lays down the correct law.

28. In the result, the appeal is allowed. The judgment of the High Court allowing the Writ Petition of the respondent-tenants is set aside and the orders of the Rent Controller and Eviction Officer are restored. In the circumstances of the case, there shall be no order as to costs.

29. However, respondents shall not be evicted from the premises in question upto 30th June, 1995, if they file usual undertaking before this Court within four weeks from today.