

(2003) 11 AHC CK 0215

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 50341 of 2003

Arun Kumar Singh and Others

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision: Nov. 12, 2003

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 29, 151, 47
- Constitution of India, 1950 - Article 226
- Hindu Succession Act, 1956 - Section 8
- Provincial Small Cause Courts Act, 1887 - Section 25
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 12(1), 3

Citation: (2005) 1 ARC 597 : (2005) 2 AWC 1574

Hon'ble Judges: S.P. Mehrotra, J

Bench: Single Bench

Advocate: Sanjay Kumar, for the Appellant;

Final Decision: Dismissed

Judgement

S.P. Mehrotra, J.

The present Writ Petition under Article 226 of the Constitution of India has been filed, inter alia, praying for quashing the order dated 14.10.2003 (Annexure No. 2 to the Writ Petition) passed by the learned Judge, Small Cause Court, Kanpur Nagar and the order dated 24.10.2003 (Annexure No. 1 to the Writ Petition) passed by the learned District Judge, Kanpur Nagar.

2. The dispute relates to a shop situated in Premises No. 108/186, Sisamau Bazar, Kanpur, the details where of are given in the judgment and decree dated 8.2.1984 passed in S.C.C. Suit No. 92 of 1979 referred to herein-after. The said Shop has herein-after been referred to as the "disputed shop".

3. From a perusal of the allegations made in the Writ Petition and Annexures thereto, it appears that the respondent Nos. 3 to 6 herein filed a Suit for ejectment etc., in respect of the disputed shop against the Late Jag Mohan, grandfather of the petitioners herein on the grounds of default in payment of rent and material alterations in the disputed shop. The said Suit was registered as S.C.C. Suit No. 92 of 1979.
4. By the judgment and decree dated 8.2.1984, the said S.C.C. Suit No. 92 of 1979 was decreed.
5. Thereupon, it appears that the said Jag Mohan filed a revision which was registered as S.C.C. Revision No. 47 of 1984.
6. By the judgment and order dated 30.4.1993, the said S.C.C. Revision No. 47 of 1984 was allowed by the Revisional Court, and the said S.C.C. Suit No. 92 of 1979 was dismissed.
7. Thereafter, it appears that the respondent Nos. 3 to 6 herein filed a Writ Petition being Civil Misc. Writ Petition No. 32756 of 1993.
8. By the judgment dated 5.4.2002, this Court allowed the said Writ Petition No. 32756 of 1993 and quashed the said judgment and order dated 30.4.1993 passed in the said S.C.C. Revision No. 47 of 1984 and confirmed the said judgment and decree dated 8.2.1984 passed in the said S.C.C. Suit No. 92 of 1979.
9. Copy of the said judgment dated 5.4.2002 passed in the said Civil Misc. Writ Petition No, 32756 of 1993 has been filed as Annexure No. 3 to the Writ Petition.
10. It further appears that the respondent Nos. 3 to 6 herein filed an Execution Application dated 31.5.2002 which was registered as Execution Case No. 4 of 2002. Copy of the said Execution Application dated 31.5.2002 has been filed as Annexure No. 4 to the Writ Petition.
11. It further appears that the petitioners herein filed Objections u/s 47 of the Code of Civil Procedure. The said Objections were rejected by the order dated 25th March, 2003. The petitioners herein thereafter, filed a revision which was registered as Revision No. 22 of 2003. The said Revision No. 22 of 2003 was also dismissed on 7.4.2003.
12. It further appears that the petitioners herein again filed Objection/Application (No. 4 Ga) dated 7.10.2003 u/s 47 of the CPC in the said Execution Case No. 4 of 2002. Copy of the said Objection/Application (No. 4 Ga) dated 7.10.2003 has been filed as Annexure No. 5 to the Writ Petition.
13. The respondent Nos. 3 to 6 herein filed Reply dated 9.10.2003 against the said Objection/Application u/s 47 of CPC filed on behalf of the petitioners herein.

14. Copy of the said Reply dated 9.10.2003 filed on behalf of the respondent Nos. 3 to 6 herein has been filed as Annexure No. 6 to the Writ Petition.

15. It further appears that the petitioners herein filed an application (No. 10 Ga) dated 9.10.2003 under Order XXI, Rule 29 of the CPC read with Section 151 of the Code of Civil Procedure, inter alia, praying for staying the execution of the said decree passed in the said S.C.C. Suit No. 92 of 1979 during the pendency of Suit No. 1139 of 2003. Copy of the said Application (No. 10Ga) dated 9.10.2003 under Order XXI, Rule 29 of the CPC read with Section 151 of the CPC has been filed as Annexure no. 7 to the Writ Petition.

16. The respondent Nos. 3 to 6 herein filed Objection dated 10.10.2003 against the said application dated 9.10.2003 filed on behalf of the petitioners herein under Order XXI, Rule 29 of the CPC read with Section 151 of the Code of Civil Procedure. Copy of the said Objection dated 10.10.2003 filed on behalf of the respondent Nos. 3 to 6 herein has been filed as Annexure No. 8 to the Writ Petition

17. Thereafter, the petitioners herein filed Rejoinder-Reply dated 10.10.2003 against the said Objection/Reply dated 10.10.2003 filed on behalf of the respondent Nos. 3 to 6 herein. Copy of the said Rejoinder-Reply dated 10.10.2003 has been filed as Annexure No. 9 to the Writ Petition.

18. By the order dated 14.10.2003, the learned Judge, Small Cause Court, Kanpur dismissed the said Objection/Application No. 4 Ga filed on behalf of the petitioners herein u/s 47 of the Code of Civil Procedure. Copy of the said order dated 14.10.2003 has been filed as part of Annexure No. 2 to the Writ Petition.

19. Further, by a separate order dated 14.10.2003 passed by the learned Judge, Small Cause Court, Kanpur, the said Application (No. 10 Ga) under Order XXI, Rule 29 of the CPC read with Section 151 of the CPC filed on behalf of the petitioners herein was also rejected/Copy of the said order dated 14.10.2003 has also been filed as part of Annexure No. 2 to the Writ Petition.

20. Against the said two orders passed by the learned Judge, Small Cause Court, Kanpur Nagar, each dated 14.10.2003, the petitioners herein filed a Revision u/s 25 of the Provincial Small Cause Courts Act which was registered as S.C.C. Revision No. 85 of 2003.

21. By the order dated 24.10.2003, the learned District Judge, Kanpur Nagar dismissed the said S.C.C. Revision No. 85 of 2003 in limine. Copy of the said order dated 24.10.2003 has been filed as Annexure No. 1 to the Writ Petition.

22. Thereafter, the petitioners herein have filed the present Writ Petition seeking the reliefs mentioned above.

23. I have heard Sri Sanjay Kumar, learned Counsel for the petitioners herein, and perused the record.

24. Sri Sanjay Kumar, learned Counsel for the petitioners herein submits that during the pendency of the said S.C.C. Revision No. 47 of 1984 against the said judgment and decree dated 8.2.1984 passed in S.C.C. Suit No. 92 of 1979, the said Jag Mohan expired. Thereafter, only Ram Nath, father of the petitioners herein, got himself substituted in place of the said Jag Mohan in the said S.C.C. Revision No. 47 of 1984. It is submitted by the learned Counsel for the petitioners herein that in view of the provisions of Section 3(a)(2) of the Act, "heirs" of the said Jag Mohan ought to have been substituted in the said R.C.C. Revision No. 47 of 1984. It is further submitted by learned Counsel for the petitioners herein that the petitioners herein were also included among the "heirs" of the said Jag Mohan, and therefore, their names ought to have been substituted in the said S.C.C. Revision No. 47 of 1984. The petitioners herein not have been brought on the record of the said S.C.C. Revision No. 47 of 1984, the Courts below acted illegally in passing the impugned orders.

25. I have considered the submissions made by Sri Sanjay Kumar, learned Counsel for the petitioners herein.

Section 3(a) of the Act provides as follows:-

"3. Definitions-In this Act, unless the context otherwise requires-

(a) "tenant", in relation to a building, means a person by whom its rent is payable, and on the tenant's death-

((1) in the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death;

(2) In the case of a non-residential building, his heirs)"

26. In the present case, the dispute relates to a shop, therefore, the case is covered u/s 3(a)(2) of the Act.

27. Hence, on the death of the said Jag Mohan, who had filed the said S.C.C. Revision No. 47 of 1984, the "heirs" of the said Jag Mohan could have got themselves substituted in place of the said Jag Mohan in the said S.C.C. Revision No. 47 of 1984. Accordingly, Ram Nath, father of the petitioners herein, got himself substituted in place of the said Jag Mohan being son of the said Jag Mohan.

28. The petitioners herein, admittedly, are the sons of the said Ram Nath, and therefore, the grandsons of the said Jag Mohan. During the life time of the said Ram Nath, the petitioners herein could not be "heirs" of the said Jag Mohan. On the death of the said Jag Mohan, Ram Nath, father of the petitioners herein, was the "heir" of the said Jag Mohan being son of the said Jag Mohan, and not the petitioners herein who were the grandsons of the said Jag Mohan. During the life time of the said Ram Nath, the petitioners herein did not inherit the tenancy right in the disputed shop. It was, therefore, not open to the petitioners herein to get themselves substituted in the said S.C.C. Revision No. 47 of 1984 in place of the said

Jag Mohan. As such, no illegality was committed by not bringing on record the petitioners as "heirs" of the said Jag Mohan in the said S.C.C. Revision No. 47 of 1984 after the death of the said Jag Mohan. The submissions made by the learned Counsel for the petitioners, therefore, cannot be accepted.

29. Sri Sanjay Kumar, learned Counsel for the petitioners has placed reliance on the following decisions of this Court:

1. Ratan Lal v. The Additional District Judge, Bulandshahr and Ors. 1979 A.L.J. 849 : 1979 ARC 251.

2. Sandeep Jain v. IInd Additional District and Sessions Judge, Lucknow and Ors. 1987 (2) ARC 164.

3. Asha Vaish and Ors. v. VIIth Additional District Judge, Allahabad and Ors. 1997 (2) ARC 69.

30. In Ratan Lal case (supra), a learned Single Judge of this Court laid down as follows (Paragraph Nos. 18, 19, 20 and 21 of the said A.L.J.):-

"18. The relevant sub-clauses of the aforesaid definition given in Clause (g) of Section 3 are;

(i) spouse; and

(ii) male lineal descendants.

The respondent No. 3 could not bring his case to any one of the two clauses. Admittedly, he was not a male lineal descendent of the deceased. The word "lineal" means in the direct line of descent. The expression "male lineal descendant" has been construed to mean as it were one word signifying "male in a line of males". It may be read as it were a compound word "male line". These words are intended to refer to sons, grandsons etc. In order to be a "male lineal descendant", he must be born out of the wedlock of his wife.

19. Sri Sudhir Chandra, Counsel for the respondent No. 3 however, contended that even if the respondent No. 3 was not a member of the family of the deceased, Clause (b) of Sub-section (1) of Section 12 did not apply inasmuch as he was the heir of the deceased tenant, he was entitled to continue to remain in possession of the premises as of right being the heir. He referred to the definition of the word "tenant" given in Section 3(a) of the Act, which is as follows:-

"tenant" in relation to a building means a person by whom its rent is payable and on/the tenant's death-

(1) In the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death.

(2) In the case of a non-residential building, his heirs"

Counsel contended that in order to be an heir under the aforesaid clause, it is not necessary that the person claiming to be a tenant under this clause must be born in the wedlock of the deceased. According to his contention even a testamentary heir is entitled to the tenancy rights and, as such his possession would be deemed in his own right on the death of the testator.

20. This gives rise to the question about the scope of the word "heirs" used in Section 3 of UP. Act No. 13 of 1972. Counsel contended that the word "heirs", would include testamentary heirs as well. The word "heir" has several meanings. In some of the case this word has been interpreted as including the testamentary heirs whereas in some other cases, it has been held as confining its operation only to the heirs of the deceased to be determined, in accordance with the personal law. The word "heirs" does, I think, connote an idea of succession as well as an idea of consanguinity. In the light of the various provisions of the Act, it appears that the word "heirs" in relation to a tenant should be construed as referring to the persons entitled to the property under the law of intestate succession applicable on the date when the testator dies.

21. Counsel for both the parties have referred to the various dictionary meanings in support of their respective contentions. It is not necessary to refer to those inasmuch as I have already said above that in the context in which the word "heir" has been used it is amply clear that this expression must be confined to the persons receiving the property if a tenant dies intestate. In [Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge \(Court of Wards\), Paigah](#), the Supreme Court has laid down the principle which would apply to such matters as follows (at p. 119):-

"We think that it is not correct to give as wide a meaning as possible to terms used in a statute simply because the statute does not define an expression. The correct rule is, that we have to endeavour to find out the exact sense in which the words have been used in a particular context. We are entitled to look at a statute as a whole and give an interpretation in consonance with the purpose of the statute and when logically follows from the terms used. We are to avoid absurd results.

That apart, in the present case tenancy rights have not been expressly bequeathed by will. The material portion reads:-

"Aur mere marne ke bad is karobar wa goodwill ke Malik Meri Putri Shanti Devi Sa Jaspal upnam Jasse Hongen aur unko dookan par kachchi arahat ke kam karne ka adhikar hoga....."

Secondly, the heirs of the deceased (four daughters and wife) being alive and thus excluding "heirs" enumerated in Class II of scheduled appended to Hindu Succession Act, 1956, Respondent No. 3, nephew of deceased will not inherit the tenancy rights as an heir and therefore, he will not become tenant within the meaning of tenant as defined in Section 3 (a) (2) of UP. Act No. 13 of 1972."

31. Perusal of the paragraphs quoted above shows that it was laid down that the word "heirs" as used in Section 3 (a) of the U.P. Act No. XIII of 1972 connotes an idea of succession as well as an idea of consanguinity. In the light of various provisions of the said Act, the word "heirs" in relation to a tenant should be construed as referring to the persons entitled to the property under the law of intestate succession applicable on the date when the testator dies.

32. In view of this decision, the word "heirs", as used in Section 3 (a) of the U.P. Act No. XIII of 1972, should be construed as referring to the persons entitled to inherit the property under the law of intestate succession applicable on the date when the tenant dies.

33. The said Jag Mohan indisputably was Hindu. Therefore, as noted above, on the date of death of the said Jag Mohan, his sons Ram Nath was the "heir" in view of the law of intestate succession as contained in the Hindu Succession Act, 1956, particularly Section 8 thereof and the Schedule thereto. During the life time of the said Ram Nath, the petitioners herein, who are the sons of the said Ram Nath, could not/cannot be "heirs" of the said Jag Mohan. The decision in Ratan Lal case (supra), therefore, does not help the petitioners herein.

34. In Sandeep Jain case (supra), it was laid down as follows (Paragraph No. 4 of the said ARC):-

"4. The material controversy now centres round the interpretation of the terms "tenant" and "family" as defined in Section 3 (a) and (g) of the Act. According to the learned Counsel for the opposite parties the tenant is the person by whom rent is payable and in the case of Joint Hindu Family rent although paid by the Karta is deemed to have been paid on behalf of the joint family and, therefore, each member of the joint family will come within the definition of the term "tenant". On other hand the learned Counsel for the petitioner argued that the plea of Hindu Law cannot be imported in cases arising under the U.P. Act No. XIII of 1972. The learned Counsel argued that the terms "tenant" and "family" having been defined in the Act itself, their scope cannot be extended by reference to personal laws of the landlord and tenant. I am unable to agree with the submission of the learned Counsel for the petitioner. The fallacy in the argument of the learned Counsel for the petitioner will become evident by this illustration. If the premises has been taken on rent by the Karta, the rent will of course be paid by the Karta and the rent receipt may also be issued in the name of the Karta. If the landlord files a suit for recovery of arrears and a decree is passed, that decree can be executed not only against the Karta but also against the other members, of the joint Hindu Family. Thus, each member of the joint Hindu family is liable for payment of rent in respect of the property which had been taken on rent by the Karta of the joint family. In this sense each member of the joint Family becomes a tenant within the definition of the terms given under Clause (a) of Section 3. Therefore, if the shop in question had been taken on rent Barati Lal as Karta of the joint family and was enjoyed by the members of the joint

family including Salik Ram, Salik Ram will also be tenant within the meaning of Clause (a) of Section 3. If Salik Ram is also a tenant under the Act, then obviously the premises in dispute cannot be said to have fallen vacant merely on account of one of the members of the joint family ceasing to sit at the shop and allowing the business to be looked after by another member of the joint family."

35. In my opinion, the decision in Sandeep Jain case (supra) is not applicable to the present case. In the present case, it has not been shown that the said Jag Mohan was tenant as Karta of the Joint Hindu family. Therefore, the decision in the case of Sandeep Jain (supra) does not help the petitioners herein.

36. In Asha Vaish case (supra), it was laid down as follows (Paragraph No. 5 of the said ARC):-

"5. The core question is whether an heir, who is entitled to succeed as an heir of a tenant, is entitled to relinquish his rights in the demised property. Section 3 (a) of UP. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act) defines the tenant, in relation to a building, means a person by whom its rent is payable, and on the tenant's death in the case of residential building such only of his heirs as normally resided with him in the building at the time of his death; and in case of non-residential building, his heirs. The building in question is nonresidential. On the death of the tenant his tenancy rights were to devolve upon all his heirs. The word "heir" has not been defined under the Act. The Act contemplates only natural heirs. The heirs will be determined according to personal law applicable to a party. In case of respondents, the succession will be determined in accordance with the provisions of Hindu Succession Act, 1956. The property of a male Hindu shall devolve upon the heirs as provided u/s 8 of the Hindu Succession Act, 1956. Brother is preferential heir than brother's son as enumerated in Class I and Class II of the Schedule referred to u/s 8 of Hindu Succession Act. Panna Lal, the brother of the deceased, will have a right to succeed the tenancy rights in preference to brother's son."

37. The decision in Asha Vaish case (supra) shows that Section 3(a) of the Act contemplates only natural heirs. Heirs will be determined according to personal law applicable to a party. In Asha Vaish case (supra), as the parties were Hindu, it was laid down that the succession would be determined in accordance with the provisions of the Hindu Succession Act, 1956.

38. In view of the decision in Asha Vaish case (supra), it is evident that on the death of the said Jag Mohan, who indisputably was Hindu, his tenancy right in the disputed shop developed in accordance with the relevant provisions of the Hindu Succession Act, 1956 regarding intestate succession in case of death of Hindu male. Accordingly, the said Ram Nath, son of the said Jag Mohan, inherited the tenancy right of the said Jag Mohan on the latter's death. There was no question of the petitioners herein inheriting the right of tenancy in respect of the disputed shop

during the life time of the said Ram Nath, who was the son of the said Jag Mohan. Therefore, the decision in Asha Vaish case (supra) does not help the petitioners herein.

39. No other point was pressed by the learned Counsel for the petitioners.

40. In view of the aforesaid discussion, I am of the opinion that this Writ Petition lacks merit, and the same is liable to be dismissed. The Writ Petition is accordingly dismissed.