

(1986) 10 CAL CK 0002

Calcutta High Court

Case No: C. R. No. 1069 of 1984

Shefali Addya

APPELLANT

Vs

Sunil Kumar Mondal

RESPONDENT

Date of Decision: Oct. 1, 1986

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 4
- West Bengal Premises Tenancy Act, 1956 - Section 17(2), 17(2A), 17A, 2(h), 2A

Citation: 91 CWN 792

Hon'ble Judges: Sankar Bhattacharyya, J

Bench: Single Bench

Judgement

Sankar Bhattacharyya, J.

This revisional application raises an important question for determination. The facts leading on to the application are as under. Opposite Party Nos. 1 and 2 instituted a suit, being Title Suit No. 147 of 1973 of the 1st Court of the learned Munsif at Hooghly. for eviction of the tenant Saktipada Mallick from the suit premises on the ground of requisite default in payment of rent, Saktipada Mallick died during the pendency of the suit and was substitutes by the petitioner and opposite party Nos. 3 to 10 as his heirs and legal representatives.

2. After service of summons upon opposite party Nos. 3 to 10 they entered appearance and moved an application u/s 17(2A) of the West Bengal Premises Tenancy Act, 1956 ("Act" for short).

3. The application, however, was rejected but the opposite parties took no further interest in the matter.

4. Sometime thereafter, summons was served upon the petitioner, one of the married daughters of Saktipada. Within one month of service, she entered appearance and filed an identical application u/s 17(2A) of the Act. In the

application, she admitted the default and prayed for instalments to pay off the arrear rents and statutory interest. The application was allowed and 26 monthly instalments were granted to her to pay off the arrears together with the current rent equivalent.

5. Against the said order the opposite party/landlords moved this Court in revision and obtained a Rule, being C. R. No. 3019 of 1978. The ground taken in the revisional application was that the petitioner is not a tenant as contemplated by Section 2(h) of the Act as she was not ordinarily residing with the deceased tenant at the time of his death. That being the position, she was not entitled to claim the benefit of Section 17(2A) which is available only to a tenant.

6. Since the above ground was not raised before the trial court, the learned Single Judge who heard the Rule disposed it of by sending back the case to the trial court with liberty to the landlords to agitate the point there and directing the trial court to determine, on the basis of evidence to be adduced by the parties, whether the petitioner was ordinarily residing with the deceased tenant at the time of his death and is, as such, a tenant as envisaged by Section 2(h) of the Act.

7. After the case went back to the trial court, evidence was adduced by both parties in support of their respective cases. The learned Munsif, upon consideration of the evidence so adduced, arrived at the finding that the petitioner had singularly failed to prove her case that she was ordinarily residing with the deceased tenant at the time of his death. Hence, she is not a tenant as defined in Section 2(h) of the Act and has no locus standi to invoke Section 17(2 A) of the Act. In that view of the matter the learned Munsif, by order No. 180 dated 24.2.84, rejected the petitioner's application u/s 17(2A) of the Act.

8. This order of the learned Munsif is under challenge in this revisional application.

9. Mr. Roychowdhury, appearing in support of the Rule, seriously assails the finding of the learned Munsif that the petitioner is not a tenant. According to Mr. Roychowdhury, the above finding is based on a misconception of the nature and character of a monthly tenancy under the Act and misinterpretation of Section 2(h).

10. The argument advanced by Mr. Roychowdhury may be summed up as follows:

A monthly tenancy under the Act is heritable. Where, therefore, a tenant dies during the pendency of an ejectment suit against him. all his heirs are to be substituted in his place as his legal representatives. They represent the estate of the deceased tenant and if anyone of them is left out, the suit will fail for non-joinder of necessary-party. Since a monthly tenant is heritable, all the heirs of the deceased tenant are tenants. Hence, it is immaterial whether they or any one of them were/was ordinarily residing with the deceased tenant at the time of his death. Moreover if only such heirs of the deceased tenant as were ordinarily residing with him at the time of his death are to be regarded as tenants, then no decree for

eviction can be passed against the heirs who were not so residing for the simple reason that they are not tenants. In short, according to Mr. Roychowdhury, all the heirs of the deceased tenant are tenants and no distinction between them is permissible on the ground that some of them were ordinarily residing with the deceased tenant at the time of his death, while the others were not.

11. In opposing the Rule Mr. Dasgupta, on the other hand, contends that the heirs of the deceased tenant are to be substituted in his place as his legal representatives and not as tenants. The substitution is to be made under Order 22, Rule 4, CPC to prevent abatement of the suit or its dismissal for non-joinder of necessary party. That does not, however, mean that all such heirs are tenants because, according to the definition appearing in Section 2(h) of the Act, only such heirs of the deceased tenant as were ordinarily residing with him at the time of his death are tenants, entitling them to all the protections and privileges available to a tenant under the Act. According to Mr. Dasgupta the petitioner is not a tenant as it has been found by the learned Munsif that she was not ordinarily residing with the deceased tenant at the time of his death.

12. Previously, on the principles of the English Rent Acts, a distinction was sought to be made between a tenant whose tenancy is subsisting and a person remaining in occupation of the premises after determination of or expiry of the period of the tenancy. While the former was called a contractual tenant, the latter was commonly, though not accurately, called a statutory tenant.

13. This view was taken by the Supreme Court in [Anand Nivas \(Private\) Ltd. Vs. Anandji Kalyanji Pedhi and Others](#), and was followed in two subsequent cases namely, in [The Calcutta Credit Corporation Ltd., and Another Vs. Happy Homes \(P\) Ltd.](#), and in [Jagdish Chander Chatterjee and Others Vs. Shri Kishan and Another](#), . It was held in Ananda Nivas"s case (supra) that a statutory tenant is not a tenant at all; he has no estate or interest in the premises occupied by him. He has merely the protection of the statute in that he cannot be turned out so long as he pays the standard rent and permitted increases, if any, and performs the other conditions, of the tenancy. His right to remain in possession after the determination of the contractual tenancy is personal. It is not capable of being transferred or assigned, and devolves upon his death only in the manner provided by the statute.

14. Subsequently in [Damadilal and Others Vs. Parashram and Others](#), the earlier decisions cited above were reviewed and it was held that even a statutory tenant that is, a person continuing in possession of the premises after the determination of his tenancy, is a tenant unless a decree or order for eviction has been made against him, thus putting him at par with a contractual tenant that is, a person whose tenancy still, subsists. It was further held that the incidence of such tenancy are the same as those of a contractual tenant unless any provision of the Act conveys a contrary intention (emphasis supplied).

15. It will thus appear that a statutory tenancy, like a contractual tenancy, is heritable and after the death of the statutory tenant all his heirs inherit the estate of the deceased tenant and are to be substituted in place of the deceased tenant. If any one of them is left out, the suit will fail for non-joinder of necessary party. This view was also taken in two Division Bench decisions of this court in *Asha Gupta v. Sipra Dutta* (80 CWN 187) and *Krishna Dhone v. Ram Palat* [1980 (1) C.J.L. 346].

16. The question, however, is whether all the heirs who inherit the estate of the deceased tenant are tenants and, can claim the protections and privileges available to a tenant under the Act.

17. It has been pointed out already that according to the observations of the Supreme Court in *Damadilal's* case (*Supra*) the incidence of statutory tenancy and contractual tenancy are the same unless any provision of the Act governing such tenancies conveys a contrary intention. We must therefore, look to the definition of a tenant as appearing in Section 2(h) of the Act to examine whether any contrary intention is conveyed by the definition.

18. By the West Bengal Premises Tenancy (Amendment) Act, XXIX of 1965 the definition given in Section 2(h) was amended. Before the amendment, Section 2(h) was as follows:

"Tenant" means any person by whom or on whose account or behalf, the rent of any premises is, but or for a special contract would be, payable and also any person continuing in possession after the termination of the tenancy but shall not include any person against whom any decree or order for eviction has been made by a court of competent jurisdiction.

19. The above definition, therefore, included only two classes of persons namely, a contractual tenant and a statutory tenant till any decree or order for eviction had been passed by a competent court. It did not, however, include the heirs of the statutory tenant no matter whether they were or were not ordinarily residing with him at the time of his death.

20. After the amendment in 1965, Section 2(h) reads as under:

"Tenant" means any person by whom or on whose account or behalf, the rent of any premises is, or but for a special contract, would be, payable and includes any person continuing in possession after the termination of his tenancy or in the event of such person's death, such of his heirs as were ordinarily residing with him at the time of his death but shall not include any person against whom any decree or order for eviction has been made by a court of competent jurisdiction.

21. The substitution of the words "include any person continuing in possession after the termination of his tenancy or in the event of such person's death, such of his heirs as were ordinarily residing with him at the time of his death" was clearly intended to give protection not only to the statutory tenant but also to such of his

heirs as were ordinarily residing with him in the premises at the time of his death. It is significant to note that this benefit has not been extended to all the heirs of the statutory tenant and such of the heirs as were not ordinarily residing with him at the time of his death have been deliberately excluded from the definition of tenant".

22. A plain reading of the amended definition in the light of the observations of the Supreme Court in *Damadilal*'s case can lead us to the only conclusion that though all the heirs of a statutory tenant inherit the estate of the deceased tenant under the general law and are to be substituted place of the deceased tenant as his legal representative, only such of them as were ordinarily residing with him at the time of his death would be regarded as tenants and would be entitled to claim the protections and privileges of a tenant under the Act. Apparently, the position may seem to be anomalous but then, to hold that all the heirs of a statutory tenant, although his legal representatives will be tenants entitled to the protections and privileges of a tenant under the Act, would be to render section 2(h) nugatory and extent the protections and privileges available to a tenant under the Act to such heirs of the deceased tenant who were not ordinarily residing with him at the time of his death, which the legislature never intended to do.

23. In the context it will be important to note that no such restriction has been imposed by the legislature with respect to the heirs of a contractual tenant. This also gives the clear indication that the legislature did not intend to extend the protections and privileges of a tenant to those heirs of the deceased tenant who were not ordinarily residing with him at the time of his death presumably because they would not be affected by the decree for eviction that may be passed in the suit.

24. On an ultimate analysis of the amended definition of section 2(h) of the Act and the decision in *Damadilal*'s case, the position appears to be this. All the heirs of the statutory tenant who dies during the pendency of the suit for ejectment against him inherit the estate of the deceased tenant, as his legal representatives. All such heirs must, therefore, be substituted in place of the deceased tenant as his legal representatives under Order 22, Rule 4, CPC and if any one of them be left out, the suit will fail for non-joinder of necessary party. As legal representatives of the deceased tenant, it is open to all the heirs to defend the suit by claiming that there having been no determination of the tenancy by any valid notice their right to remain in occupation and enjoyment of the suit premises as lessees continue or on grounds other than those based on the Act as are permissible in law.

25. It will be thus seen that in view of the amended definition of section 2(h) the protections and privileges available to a tenant under the Act to wit u/s 17(2), (2A), (4), Section 17A etc. will be available to only those heirs of the statutory tenant as were ordinarily residing with him at the time of his death and are, as such tenants as contemplated by section 2(h) of the Act. In the light of the decision in *Damadilal*'s case the contrary intention expressed by section 2(h) of the Act must be given effect to.

26. The above view appears to be well supported by the Division Bench decision of this court in *Asha Gupta v. Sipra Dutta*, 80 C.W.N. 187 to which reference has already been made. In the said case the learned Judges, while holding that all the heirs of the deceased tenant, as his legal representatives are necessary parties in a suit for ejectment of the deceased tenant and must, therefore, be substituted in his place under Order 22, Rule 4, Civil Procedure Code, inter alia, observed as follows:

On the principle so laid down Their Lordships were referring to the case of [Jagdish Chander Chatterjee and Others Vs. Shri Kishan and Another](#), it may be held that in the present case only such of the heirs and legal representatives who were ordinarily residing with the tenant at the time of his death would be entitled to the protections under the West Bengal Premises Tenancy Act in view of the amended definition in section 2(h) but that would not take away the legal right of all the heirs and legal representatives of the deceased tenant-defendant from contesting the suit on grounds other than those based on the West Bengal Premises Tenancy Act as are admissible in law to then.

27. In view of the foregoing discussions I hold that the learned Munsif was right in his finding that the petitioner is not a tenant as defined in section 2(h) of the Act and is not, therefore, entitled to invoke section 17 (2A) of the Act. The learned Munsif, therefore, rightly rejected the petitioner's application u/s 17(2A) of the Act. That being the position, there is absolutely no ground for interference with the impugned order. In the result, the Rule is discharged. There will be no order as to costs.

Let the records go down immediately to the court below.