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## Smt. Sushilabai Dantye and others Vs Ganpat Kudtarkar

### Second Appeal No. 40 of 1995

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**Court:** Bombay High Court (Goa Bench)

**Date of Decision:** Feb. 17, 1998

**Acts Referred:**

Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 " Section 2, 56

**Citation:** (1999) 2 BomCR 588

**Hon'ble Judges:** R.M.S. Khandeparkar, J

**Bench:** Single Bench

**Advocate:** Sudin M. Usgaonkar, for the Appellant; N.K. Swaikar, for the Respondent

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### Judgement

@JUDGMENTTAG-ORDER

R.M.S. Khandeparkar, J.

This appeal was admitted on the following substantial questions of law:

- (1) Whether statutory tenancy under the Goa Rent Control Legislation is heritable or not?
- (2) Whether the amendment in 1978 of the definition of the word "tenant" under the Goa legislation is prospective or retrospective?
- (3) Even if the amendment of the definition of "tenant" is not retrospective, whether the appellants can still contend that the tenancy is heritable?
- (4) Whether the Civil Court has jurisdiction to grant a decree for eviction against the heirs of the tenant or whether the jurisdiction rests exclusively with the Rent Controller under the Rent Control Legislation?

2. The undisputed facts which are relevant for the decision are that the respondent herein who is the owner in possession leased out the house in

question to one Ramnath Mangesh Dantye, who was the husband of the appellant No. 1 and the lease deeds were registered from time to time and

last such lease deed is dated 17-10-1974 for a period of three years. The said period of lease expired on 16th October, 1977, and consequently,

the agreement of lease came to an end on 16-10-1977. However, though the lease was not renewed, the late Ramnath Mangesh Dantye,

continued to occupy the house in question along with the appellants herein as the statutory tenant in respect of the suit house. The said Ramnath

expired on 7-12-1977, leaving behind the appellants herein who continued to occupy the suit house after his death. The respondent herein

thereupon filed a suit for eviction of the appellants on the ground that the statutory tenancy in favour of Ramnath Dantye came to an end on his

death on 7-12-1977, and that the statutory tenancy being not heritable, the appellants were mere trespassers, having no right, title or interest of any

kind to continue to occupy the suit house. The claim of the respondent was contested by the appellants on various grounds, including the ground of

lack of jurisdiction to the Civil Court to entertain the suit for eviction of the appellants, they being the lawful heirs of the statutory tenant and that

such tenancy is heritable. It was contended that the Civil Court has no jurisdiction to evict the tenant from a building/premises in terms of the

provisions contained in Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1967 (hereinafter called as "the said Act"). The

trial Court, upon hearing the parties, partly decreed the suit directing the appellants to vacate the suit house, simultaneously holding that the late

Ramnath Dantye was a statutory tenant and that such tenancy was not heritable. The appeal preferred against the said judgment was dismissed by

the lower Appellate Court confirming the findings of the trial Court, while holding that the statutory tenancy in favour of Ramnath came to an end

after his death and, therefore, the appellants were the trespassers.

3. The suit which was filed by the respondent in the trial Court was registered as Regular Civil Suit No. 31/1978. The appeal preferred against the

decree of the trial Court by the appellants herein was registered as Regular Civil Appeal No. 1/92. The trial Court's decree is dated 27-11-1991,

whereas, that of the lower Appellate Court is dated 16-9-1995.

4. While assailing the impugned decree, Shri S.M. Usgaonkar, learned Advocate appearing for the appellants contended that in terms of section

2(p) of the said Act, the tenancy in respect of the leased premises has always been heritable, irrespective of the fact whether it was contractual or

statutory and that the said definition always provided that even after termination of tenancy, if a person continues to be in possession of the

premises until he is lawfully evicted by an order of the Court, he continues to be a tenant within the meaning of section 2(p) under the said Act and,

therefore, considering section 56 of the said Act, the Civil Court has no jurisdiction to order eviction of late Ramnath Dantye even after expiry of

contractual tenancy in the year 1977. In other words, if the suit was to be filed against the said late Ramnath Dantye after expiry of contractual

tenancy in the year 1977, the same could not have been entertained by the Civil Court. Applying the same principle to a person whose tenancy

rights are said to be terminated but continues to be in possession of the leased premises till he is lawfully evicted by the Order of the Court, he is to

be construed as the tenant within the meaning of section 2(p) of the said Act. And, therefore, no Civil Court could have entertained any suit for

eviction of the appellants. That apart, the Legislature in its wisdom has specifically amended the said section 2(p) thereby has clarified that certain

class of people after the death of original tenant shall continue to enjoy the status of statutory tenants, provided they were living with such tenant

upto the time of this death in case of a residential premises. This according to learned Advocate is clear from the amendment to section 2(p) by the

Legislature in the year 1978, which came into force with effect from 18-5-78. Though the amendment was sought to be brought into force from

18-5-78, the effect of such amendment was retrospective in nature in view of the scope of the definition of term "tenant" in section 2 (p) as it stood

originally. In support of his submission, Shri Usgaonkar, relied upon the judgment of the Apex Court in the case of Gian Devi Anand Vs. Jeevan

Kumar and Others, . According to Shri Usgaonkar, though the said judgment is with reference to the provision of the Delhi Rent Control Act, the

provision of the said Act is in para materia with the provisions contained in the Delhi Rent Control Act, and, therefore, is squarely applicable to the

case in hand. He further submitted that the term "tenant" as defined in section 2(p) even prior to its amendment, included contractual as well as

statutory tenants. What has been done by the amendment is only to restrict the benefit of inheritance to a particular class of people in case of a

residential premises. Placing reliance on Gain Devi Anand's case, he further submitted that there is no scope for a different treatment to statutory

tenants from that one to the contractual tenants and the same approach is to be adopted in case of both the tenants as has been held by the Apex

Court in the said decision. Being so, according to learned Advocate, the Court had clearly erred in holding that the tenancy was not statutorily

heritable and that the Civil Court has jurisdiction to entertain the eviction proceedings against the appellants.

5. Shri. N.K. Sawaikar, learned Advocate for the respondent, on the other hand, submitted that section 2(p) of the said Act was amended only in

the year 1978, and was brought into force w.e.f. 18-5-1978 and it is not of retrospective nature. Undisputedly, contractual tenancy came to an

end on 16-10-1977. The statutory tenancy expired on 7-12-1977. The provisions which came into force by virtue of the amendment in the year

1978 were not in force on the date of death of Ramnath and, therefore, the appellants are not entitled to claim any benefit under the amended

section 2(p) of the said Act. According to learned Advocate, the decision of the Supreme Court in Gain Devi Anand's case was in relation to the

provisions contained in Delhi Rent Control Act, wherein there was amendment with retrospective effect and this is evident from the Judgment itself.

Being so, the said decision cannot be applied to the facts in the case in hand, wherein the amendment was brought much after the death of the

statutory tenant.

6. As already seen above, the factual matrix of the instant case is not in dispute and in order to answer the substantial question of law formulated

above the basic point which requires to be considered is the scope of section 2(p) of the said Act pursuant to the amendment in the year 1978 as

well as prior thereto. Section 2(p) of the said Act prior to the amendment of the year 1978, provided thus:-

""tenant"" means any person by whom or on whose account or behalf the rent of any building is, or but for special contract would be, payable and

includes a sub-tenant and also any person continuing in possession after the termination of his tenancy, but shall not include any person against

whom any order or decree for eviction has been made.

The said definition was amended by Act No. 7 of 1978 and the amended section reads thus:-

2(p) ""tenant"" means any person by whom or on whose account or behalf the rent of any building is, or but for special contract would be, payable

and includes (in the event of his death the surviving spouse, or any son, or unmarried daughter or father or mother who has been living with him as

a member of his family upto the date of his death and) a sub-tenant and also any person continuing in possession after the termination of his

tenancy, but shall not include any person against whom any order or decree for eviction has been made.

7. A plain reading of unamended section 2(p) discloses that the tenant is a person who occupies a building on rent and includes a sub-tenant as

well as any person continuing in possession of the premises after termination of his tenancy and till he is lawfully evicted by an order of a Court. In

other words, to be a tenant of the building by virtue of unamended definition of the term ""tenant"", it was not necessary to be a contractual tenant,

but it also included a statutory tenant. This is clear from the portion of the definition of term ""tenant"" in section 2(p), wherein it was specifically

provided that ""any person continuing in possession after the termination of his tenancy"". The question of a person continuing in possession after

termination of tenancy can arise only in case of contractual tenancy or statutory tenancy being terminated by virtue of express notice. Some of the

Rent Acts do require such termination tenancy before seeking eviction of the tenants. However, in the said Act, there is no provision whereby it is

obligatory upon the landlord to terminate to tenancy in order to initiate proceedings for eviction. Whenever a landlord desires to file eviction

proceedings against his tenant on account of change of user or for sub-letting of the premises or on account of the tenant acquiring his own

premises in the town and the like, the landlord need not give prior notice of termination of tenancy as such to the concerned tenant, but can straight

away file the proceedings for eviction of the tenant on any of those grounds. In other words, there is no provision in the said Act requiring the

landlord to terminate the tenancy as such before seeking to evict him through the Court of law. No doubt, a statutory notice has been certainly

provided for before filing eviction proceedings in case of eviction on account of default in payment of rent. But the said provision nowhere provides

that it is a notice of termination of tenancy as such. Therefore, it is clear that the termination of tenancy referred to in section 2(p) can be of the

contractual tenancy alone and not of statutory tenancy. Once it is clear that section 2(p) provided statutory protection even to a person whose

contractual tenancy rights are terminated, it is clear that the unamended section 2(p) not only referred to statutory tenants, but also referred to the

contractual tenants. It is, therefore, clear that the legislature by the amendment in 1978, specifically provided that in case of death of a tenant, the

surviving spouse, son, unmarried daughter and parents, who were living with him upto the date of his death, would also acquire the status of tenant.

8. The Apex Court in Gian Devi Anand's case while dealing with various provisions of the Delhi Rent Control Act, has clearly held that in a Rent

Act wherein a tenant includes any person who continues to remain in possession even after the termination of his contractual tenancy till a decree

for eviction against him is passed, such a tenant even after determination of the tenancy would continue to have interest in the tenanted premises

and his rights in the premises would be heritable and the heirs of deceased tenant in absence of any provision in the statute providing to the

contrary would step into the shoes of the deceased tenant and all rights and obligations of the deceased tenant including the protection afforded to

the deceased tenant under the statute would devolve upon the heirs of such deceased tenant. This being the ratio of the decision of the Apex Court

in the matter of Gian Devi Anand v. Jeevan Kumar and others (supra) and considering the definition, amended as well as unamended, of the term

tenant"" u/s 2(p) of the said Act, it is clear that the said Act clearly defines the term ""tenant"" to include a person continuing to be in possession even

after termination of his contractual tenancy till the date of lawful decree of eviction against him. The Apex Court having clearly held that such a

person acquires interest in the tenanted premises and there being no provision in the said Act, which curtails any of the right of the heirs of a tenant,

including statutory tenant, except to the extent prescribed in section 2(p) of the said Act by way of amendment in the year 1978, it cannot be said

that a statutory tenancy is not heritable within the meaning of section 2(p) of the said Act.

9. In fact, the provisions which are transcribed in the Judgment of the Apex Court in respect of term "tenant" under the Delhi Rent Control Act,

clearly disclose that the said definition is almost in para-materia with the definition of the term "tenant" under the said Act. In terms of section 2(i) of

the Delhi Rent Control Act, tenant means a person by whom or on whose account or behalf the rent of any premises is, or but for special contract

would be, payable and includes a sub-tenant and also any person continuing in possession after the termination of his tenancy and in the event of

the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and conditions specified

respectively in Explanation I and Explanation II to the Clause. Such of the aforesaid persons are : (a) spouse, (b) son or daughter, or, where there

are both son and daughter, both of them, (c) parents, (d) daughter-in-law, being the widow of his pre-deceased son, as had been ordinarily living

in the premises with such person as a member or members of his family upto the date of his death but does include, (A) any person against whom

an order or decree for eviction has been made, except where such decree or order for eviction is liable to be re-opened under the proviso to

section 3 of the Delhi Rent Control (Amendment) Act, 1976, (B) any person to whom a licence, as defined by section 52 of the Indian Easements

Act, 1882, has been granted. In other words, under the Delhi Rent Control Act, the term "tenant" also includes any person continuing in

possession after the termination of his tenancy, as it is stipulated u/s 2(i) of the Delhi Rent Control Act. Referring to the said section, the Apex

Court observed in the said Judgment thus :-

The termination of the contractual tenancy in view of the definition of tenant in the Act does not bring about any change in the status and legal

position of the tenant, unless there are contrary provision in the Act; and the tenant notwithstanding the termination of tenancy does enjoy an estate

or interest in the tenanted premises. This interest or estate which the tenant under the Act despite termination of the contractual tenancy continues

to enjoy creates an heritable interest in the absence of any provision to the contrary.

The Judgment further reads that:

..... Section 2(1) which unequivocally states that tenant includes any person continuing in possession after the termination of his tenancy. In the

absence of the provision contained in subsection 2(1)(iii) the heritable interest of the heirs of the statutory tenant would devolve on all the heirs of

the "so called statutory tenant" on his death and the heirs of such tenant would in law step into his position. This sub-section (iii) of section 2(1)

seeks to restrict this right in so far as the residential premises are concerned. The heritability of the statutory tenancy which otherwise flows from

the Act is restricted in case of residential premises only to the heirs mentioned in section 2(1)(iii) and the heirs therein are entitled to remain in

possession and to enjoy the protection under the Act in the manner and to the extent indicated in sub-section 2(1)(iii)".

The Apex Court has further held therein that the amendment brought about to section 2 of the Delhi Rent Control Act, did not create any

additional or special right in favour of the heirs of the tenant in that regard. The Apex Court has further held therein thus :-

Section 2(1)(iii) of the Act does not create any additional or special right in favour of the heirs of the "so called statutory tenant" on his death, but

seeks to restrict the right of the heirs of such tenant in respect of residential premises. As the status and rights of a contractual tenant even after

determination of his tenancy when the tenant is at times described as the statutory tenant are fully protected by the Act and the heirs of such tenants

become entitled by virtue of the provisions of the Act to inherit the status and position of the statutory tenant on his death, the Legislature which has

created his right, has thought it fit in case of residential premises to limit the rights of the heirs in the manner and to the extent provided in section

2(1)(iii).

It is thus clear that considering the scope of section 2(1)(iii) whereby the Delhi Rent Control Act was sought to be amended by specifying heirs of

the deceased tenant in case of residential premises, the Apex Court has clearly held that by the said amendment, the Legislature did not create any

additional or special right in favour of the heirs, but only restricted the rights of heirs of such tenant in respect of the residential premises. In other

words, the Apex Court has held that the right of heritability was already there even before amendment was brought into force. The scope of the

amendment was only to restrict the right of inheritance in favour of specific class of people as has been done in case of said Act by Legislature. The

amendment which was brought in the year 1978, did not for the first time provide for heritability of tenancy right in favour of the spouse and other

class of people specified in section 2(p) by way of amendment, but on the contrary, by the said amendment, the right of inheritance has been

restricted in favour of the persons specified therein. Applying the test laid down in the matter of Gian Devi Anand's case, therefore, the argument

of the learned Advocate for the respondent that the amendment is prospective in nature cannot be accepted. It is clear from the definition of term

tenant"" in section 2(p), even as it existed before amendment in the year 1978 and particularly considering the ratio of the decision of Gian Devi

Anand's case that the tenancy was always heritable under the said Act and what was done by the amendment in the year 1978, was to restrict the

right of inheritance in favour of specified class of people. Undisputedly, the appellant No. 1 is the spouse and the other appellants are sons and

unmarried daughters of the deceased tenant and were living with him upto the date of death of the tenant. The appellants, are, therefore, within the

zone of specified class of people and therefore are entitled for protection under the said Act being the heirs of statutory tenant late Ramnath

Dantye.

10. Therefore, as regards the question framed at No. 1, it is to be held that statutory tenancy under the said Act is heritable. As regards question

No. 2, whether the amendment in the year 1978, to the definition of the word "tenant" is prospective or retrospective in nature, as already held

above is of no relevance considering the scope of the definition of term "tenant" as it stood even prior to the amendment and, therefore, the said

question does not at all arise for consideration. As regards the third question, the same is to be answered in the affirmative as it is already held

above that the tenancy is heritable. The appellants are therefore the tenants within the meaning of the term "tenant" under the said Act. In view of

the provisions contained in section 56 of the said Act which clearly provides that no Court shall have jurisdiction to settle, determine or deal with

any question which is by or under this Act required to be settled, determined or dealt with the Controller, the Civil Court had no jurisdiction to

entertain the suit for eviction of the appellants, filed by the respondent herein. The fourth question, therefore, as framed is to be answered in the

negative as far as first part thereof is concerned and in the affirmative, as far as second part is concerned.

11. In the result, the appeal succeeds and the same is hereby allowed. The Judgment and the Decree of the trial Court as well as that of the lower

Appellate Court are set aside. The suit filed by the respondent is, hereby, dismissed for want of jurisdiction to entertain the same. There shall be no

order as to costs.

12. Appeal allowed.