

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RC.S.A. 8/2005**

Reserved on : 25.10.2010
Date of Decision : 29.10.2010

THE VAISH COOP. ADARSHA BANK LTD. Appellant
Through: Mr.Deepak Agarwal, Adv.

versus

SUDHIR KUMAR JAIN & ORS. Respondents
Through: Mr.Sanjiv Kakra, Adv. for R-1&2.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

: **MOOL CHAND GARG,J**

1. This appeal filed under Section 39 of the Delhi Rent Control Act 1958 (hereinafter referred to as "the Act") is directed against the order dated 11.03.2005 passed by the Additional Rent Control Tribunal, Delhi, in RCA No.578/2002, whereby the learned Tribunal has allowed the appeal and set aside the order dated 02.07.2002 passed by the Additional Rent Controller, Delhi, whereby an eviction order has been passed in an Eviction Petition No. 221/1988 filed under Section 14(1)(b) of the Act on the ground of the alleged subletting etc. of the premises in question.

2. The relevant facts leading to the filing of this case are that suit premises situated on plot No. 3, Block A, Netaji Subhash Marg, Darya Ganj, Delhi bearing Municipal No. 5055, Ward No. XI (hereinafter referred to as 'premises') were purchased by the appellant from its previous owner on 28.02.1975 with Shri Jugmohinder Lal Jain a tenant in respect of one garage/shop (hereinafter referred to as the suit property). Consequently, Shri jugmohinder Lal Jain became a tenant of the appellant in the said property w.e.f. 01.03.1975. Shri

Jugmohinder Lal Jain later died on 27.06.1987. During his life time he executed a Will dated 15.06.1987 whereby he bequeathed his interest in aforesaid property as a tenant in favour of one of his son i.e. the first respondent to the exclusion of other legal heirs.

3. According to the appellant after receiving a letter from the first respondent and came to know about the bequeath of the tenancy rights in the suit property by the deceased Shri Jugmohinder Lal Jain by executing a Will before his death on 15.06.1987 in favour of the first respondent only, who is admittedly one of the legal heirs of the deceased Shri Jugmohinder Lal Jain, without the written consent of the landlord and considering this act on the part of the deceased tenant as an act of assignment/transfer/ subletting, the appellant filed eviction petition No. 221/1998 before the Additional Rent Controller Delhi on 06.07.1988 seeking eviction of the respondents under Section 14(1)(b) of Delhi Rent Control Act 1958. The said eviction petition was allowed in favour of the appellant. Against the said order dated 02.07.2002 the first respondent filed an appeal before the Addl. Rent Control Tribunal being (RCA No. 578/2002) primarily on the ground that in view of Section 2 (I) of the Act, succession of a commercial tenancy is inherited by all the legal heirs of the original tenant after his death as such bequeathing of the tenancy rights of the suit property in favour of one of the legal heirs out of many heirs would not constitute an act of subletting. The appeal was allowed.

4. This is the order which has been assailed by the appellant before me under Section 39 of the Act. According to the appellant this appeal raises following substantial question of law for the determination by this Court in this appeal i.e.

“Whether the bequest of tenancy rights, by way of a Will to only one heir out of many heirs, whereby the other heirs are ousted and only one heir is granted the tenancy rights, does not amount to subletting?”

5. According to the appellant the Additional Rent Control Tribunal went wrong in having interfered with the well-reasoned order passed by the Additional Rent Controller and further failed to appreciate that after bequeathing the tenancy rights only in favour of one of the legal heirs by way of a Will by a deceased tenant who was not even in

possession of the suit premises, was a clear case of assignment of the suit property by way of a Will in favour of the first respondent and thus constitute an act of subletting within the meaning of Sub-section (b) of Section 14 of the Act.

6. It is submitted by the appellant that the legal position in relation to the commercial tenancy in the Delhi Rent Control Act the issue of subletting as a ground of eviction in this case can only be examined in relation to the provisions of Delhi Rent Control Act and not in relation to the Rent Acts in other states. Under the Delhi Rent Control Act commercial tenancy is inheritable and, therefore, on the death of the deceased Shri Jugmohinder Lal Jain all his legal heirs became tenants as per the definition of the 'tenant' under the Delhi Rent Control Act. There is statutory prohibition under the Delhi Rent Control Act against any assignment of the tenancy rights may be by way of a Will in favor of one of the legal heirs. Therefore, notwithstanding the will alleged to have been executed by the deceased Shri Jugmohinder Lal Jain in favour of one of his sons, the same was of no legal significance qua the other legal heirs, who became 'tenant' as defined in the Act on the day their father died.

7. It is further submitted that in view of provisions contained under Section 16 of the Act the tenancy rights cannot be transferred or assigned either in full or in any part thereof. The said provision reads as under:

"16. Restrictions on sub-letting-

(1) Where at any time before the 9th day of June, 1952, a tenant has sub-let the whole or any part of the premises and the sub-tenant is, at the commencement of this Act, in occupation of such premises, then notwithstanding that the consent of the landlord was not obtained for such sub-letting, the premises shall be deemed to have been lawfully sub-let.

(2) No premises which have been sub-let either in whole or in part on or after the 9th day of June, 1952, without obtaining the consent in writing of the landlord, shall be deemed to have been lawfully sub-let.

(3) After the commencement of this Act, no tenant shall, without the previous consent in writing of the landlord,-

- (a) sub-let the whole or any part of the premises held by him as a tenant; or
- (b) transfer or assign his rights in the tenancy or in

any part thereof.”

8. Relying upon the aforesaid provision it is stated that the execution of a Will in this case by transferring the tenancy rights to only one of the legal heirs after the death of the deceased tenant was an act of transferring/ assigning his rights in the tenancy by the deceased landlord to only one of the legal heirs to the exclusion of all others and thus, it was an act of assignment which constitute sub-letting and is prohibited under the aforesaid clause.

9. It is submitted by the appellant that for the aforesaid reasons the order passed by the Tribunal is liable to be set aside because it amounts to mis-interpreting the provisions contained Section 14(1)(b) and Section 16 of the Act.

10. On the other hand, the counsel for the respondent has submitted that bequeathing tenancy to one of the legal heirs in exclusion to other legal heirs would not constitute sub-letting. In this regard he has relied upon the following judgments.

- (i) Bhavarlal Labhchand Shah Vs. Kanaiyalal nathalal Intawala, AIR 1986 SC 600
- (ii) Mahant Karam Singh Vs. Mulakh Raj, 1992 (2) RCR 62
- (iii) Smt. Daljit Kuar Vs. Smt. Rukman & Ors., 1988 (2) 1988 (2) RCR 715.

11. I have heard the submissions made by both sides and I have also gone through the judgments cited at bar and have perused the record of the case.

12. In the case of Jagdish Kishore Kakar Vs. Krishna Baijal 1996 AD (Del)-1-682 relied upon by the appellant a Learned Single Judge of this Court has held that bequeathing the rights to one of the legal heirs constitutes sub-letting while dealing with a case where the bequeath was only in favour of an adopted son. Para 15 to 17 of the said Judgment are relevant and reads as under:

“15. It has next been contended by the learned counsel for the appellants that the deceased Sm. Brij Rani Baijal through the abovesaid will bequeathed the said tenancy rights in favour of the appellant No.1. Thus the appellant has become a legal and valid tenant of the disputed property under the said will (vide Ex. DW4/1). I am sorry I am unable to agree with the contention of the learned

counsel.

16. Section 14(b) of the Delhi Rent Control Act deals with sub-letting, assigning or parting with possession over tenanted accommodation without the prior permission of the landlord. In case a tenant does so in that eventuality he is liable to eviction under the said provision of law. Thus, if the contention of the learned counsel for the appellant is to be accepted as correct, then the same would be in utter disregard and clear violation of Section 14(1)(b) of "that the tenant has on or after the 9th day of June 1952, sub-let assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord.

17. I thus feel that the courts below were correct in their conclusion that the tenancy rights cannot be the subject matter of a bequest."

13. It may however be observed that the tenancy was bequeathed in favor of the adopted son by the deceased tenant who does not come in the category of Class I legal heirs of the deceased tenant for the purpose of inheriting a commercial tenancy. In the aforesaid judgment a reference has also been made to the judgment of the Hon'ble Supreme Court delivered in the case of Vasant Pratap Pandit Vs. Dr. Anant Trimbak Sabnis (1994) 3 SCC 481 where the Apex Court while dealing with Section 15 of Bombay Rent Hotel & Lodging House Rates Control Act, 1947 which is para-materia with Section 14(1)(b) of Deli Rent Control Act observed as follows:-

"The matter may be viewed from another angle also. If the word 'heir' is to be interpreted to include a 'legatee' even a stranger may have to be inducted as a tenant for there is no embargo upon a stranger being a legatee. The contention of Mr. Sorabjee that 'heir' under a Will may be confined to only members of the family cannot be accepted for there is no scope for giving such a restrictive meaning to that word in the context in which it appears in the act as earlier noticed, unlike in other Rent Acts. Coming now to meaning of the words 'assign' or 'transfer' as appearing in Section 15 we find that 'transfer' has been qualified by the words in any other manner' and we see no reason why it should be restricted to only transfer inter vivos. As has been rightly pointed out by the High Court in the impugned judgment the Transfer of Property Act limits its operation to transfer inter vivos and therefore, the meaning of the word 'transfer' as contained therein cannot be brought in aid for the purpose of the Act. On the contrary, the wide amplitude of the words in any other manner' clearly envisages that the word 'transfer' has been used therein a generic sense so as to include transfer

by testament also.”

14. Thus the Court was considering the circumstances where a will may be executed in favor of a stranger who may not be even a legal heir.

15. Reference has also been made to another judgment of the Supreme Court in M/s Shree Chamundi Mopends Ltd. Vs. Church of South India Trust Association reported as AIR 1992 SC 1439. In the aforesaid judgment it has been held:-

“It is clear from provisions of S.23 which prohibits sub-letting or transfer by the tenant that except in cases covered by the provisos to sub-section (1) of S.23, there is a prohibition for a tenant to sub-let whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein. This prohibition is however, subject to a contract to the contrary. A tenant who sub-lets or assigns or transfers the premises in contravention of this prohibition loses the protection of law and can be evicted by the landlord under Section 21 (1) (f). In the case of a statutory tenant, the relationship is not governed by contract. The prohibition against assignment and transfer is therefore, absolute and the interests of a statutory tenant can neither be assigned nor transferred. This means that the interest of the statutory tenant in the premises in his occupation, as governed by the Karnataka Rent Control Act is a limited interest which enables the surviving spouse or any son or daughter or father or mother of a deceased tenant who had been living with the tenant in the premises as a member of the tenant's family up to the death of the tenant and a person continuing in possession after the termination of the tenancy in his favour, to inherit the interest of the tenant on his death. The said interest of the tenant is however, not assignable or transferable.”

16. On the facts of this case this judgment also does not lay down a law that the tenancy rights cannot be bequeathed to one of the legal heirs who are likely to succeed the tenancy rights in the case of the death of statutory tenant in a commercial tenancy.

17. In Bhavarlal labhchand Shah's case (supra) the Hon'ble Supreme Court has made the following observations:-

“5. We are concerned in this case with a building which is let for business and insofar as business premises are concerned it provided in Section [5\(II\)\(c\)\(ii\)](#) that any member of the tenant's family carrying on business, trade

or storage with the tenant in the premises at the time of the death of the tenant as may continue, after his death, to carry on the business trade or storage, as the case may be in the said premises and as may be decided in default of agreement by the Court shall be treated as a tenant. **It is significant that both Sub-clauses (i) and (ii) of Clause (c) of Sub-section (11) of Section 5 of the Act which deal with the devolution of the right to tenancy on the death of a tenant in respect of residential premises and premises let for business, trade or storage respectively do not provide that the said right of tenancy can devolve by means of testamentary disposition on a legatee who is not referred to in the respective Sub-clauses.** It has, therefore, to be understood that even the extended meaning given to the expression 'tenant by Sub-section (11) of Section 5 of the Act does not authorise the disposition of the right to the tenancy of the premises governed by the Act under a will. Ordinarily it is only an interest that can be inherited that can be bequeathed. But the heritability of a tenancy after the determination of the lease, which is protected by the Act is restricted in the case of residential premises only to the members of the tenant's family mentioned in Sub-Clause (i) of Clause (c) of Section [5\(11\)](#) of the Act and in the case of premises let for business, trade or usage to members belonging to the family of the tenant carrying on business, trade or storage with the tenant as may continue after his death to carry on the business, trade or storage as the case may be in the said premises and as may be decided in default of the agreement by the Court as provided in SubClause (ii) thereof. When the statute has imposed such a restriction, it is not possible to say that the tenant can bequeath the right to such tenancy in the case of premises let for business, trade or storage in favour of a person not possessing the qualification referred to in Section [5\(11\)\(c\)\(ii\)](#) of the Act. **The petitioner admittedly is not a person possessing the said qualification.** It is appropriate to refer here to the following observations made by A.N. Sen, J. who has written the main judgment of the case in [Gian Devi v. AIR1985SC796](#) :

“In the absence of the provision contained in Sub-Section 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 herein are entitled to remain in possession and to enjoy the protection under the**

Act in the manner and to the extent indicated in Section 2(1)(iii). The Legislature which under the Rent Act affords protection against eviction to tenants whose tenancies have been terminated and who continue to remain in possession and who are generally termed as statutory tenants, is perfectly competent to lay down the manner and extent of the protection and the rights and obligations of such tenants and their heirs. 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 seems 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 this right has thought it fit in the 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 appears that the Legislature has not thought it fit to put any such restrictions with regard to tenants in respect of commercial premises in this Act.**

(underlining by us)

6. In the above decision this Court was considering the provisions of the Delhi Rent Control Act in which restriction had been placed on the heritability of the statutory tenancy in the case of residential premises only to the heirs mentioned in Section 2(1)(iii) of the Delhi Rent Control Act and no such restriction had been placed with regard to the right of tenancy in respect of commercial premises. Proceeding further A.N. Sen, J. observed in the above decision at page 813 thus :

In the Delhi Act, the Legislature has thought it fit to make provisions regulating the right to inherit the tenancy rights in respect of residential premises. The relevant provisions are contained in Section 2(1)(iii) of the Act. With regard to the commercial premises, the Legislature in the Act under consideration has thought it fit not to make any such provision. It may be noticed that in some Rent Acts provisions regulating heritability of commercial premises have also been made whereas in some Rent Acts no such provisions either in respect of residential tenancies or commercial tenancies has been made. **As in the present Act, there is no provision regulating the rights of the heirs to inherit the tenancy rights of premises which is commercial premises, the tenancy right which is heritable devolves on all the heirs under the ordinary law of succession.** The tenancy right of

Wasti Ram, therefore, devolves on all the heirs of Wasti Ram on his death.

7. In view of the above decision, we are of the opinion that **the right to occupy the premises after the determination of the lease cannot be bequeathed to any person under a will who does not satisfy the qualification, referred to in Section [5\(11\)\(c\)\(ii\)](#) of the Act.** In Gian Devi's case (supra) the Court was not concerned with the right of a tenant to bequeath his right to remain in possession of a premises after the determination of the lease which he possessed under the statute in favour of a third party under a will. The Court was dealing with the case of persons who claimed that they had inherited such right by way of intestate succession. Naturally the Court was inclined to take a view favourable to the members of the family of the tenant who would be exposed to grave difficulties if they were to be thrown out of the demised premises in which the tenant was carrying on his business till his death. This is clear from the following observations of A.N. Sen, J. at page 811 :

A tenant of any commercial premises has necessarily to use the premises for business purposes. Business carried on by a tenant of any commercial premises may be and often is, his only occupation and the source of livelihood of the tenant and his family; and the tenant, if he is residing in a tenanted house, may also be paying his rent out of the said income... The mere fact that in the Act no provision has been made with regard to the heirs of tenants in respect of commercial tenancies on the death of the tenant after termination of the tenancy, as has been done in the case of heirs of the tenants of residential premises, does not indicate that the Legislature intended that the heirs of the tenants of commercial premises will cease to enjoy the protection afforded to the tenant under the Act. The Legislature could never have possibly intended that with the death of a tenant of the commercial premises, the business carried on by the tenant, however, flourishing it may be and even if the same constituted the source of livelihood of the members of the family, must necessarily come to an end on the death of the tenant only because the tenant died after the contractual tenancy had been terminated. It could never have been the intention of the Legislature that the entire family of a tenant depending upon the business carried on by the tenant should be completely stranded and the business carried on for years in the premises which had been let out to the tenant must stop functioning at the premises which the heirs of the deceased tenant must necessarily vacate, as they are afforded no protection under the Act. **We are of the opinion that in case of commercial premises governed by the Delhi Act, the Legislature has not**

thought it fit in the light of the situation at Delhi to place any kind of restriction on the ordinary law of inheritance with regard to succession.

8. The reasons given by the Court in the above decision in support of the case of the heirs of a tenant who inherit his business under the intestate succession would not however be available in the case of a person who is a stranger to the family who claims the right to the tenancy under a will of a deceased tenant. There can possibly be no justification either in law or in equity to extend the meaning of the expression 'tenant' so as to include such strangers also. If such a right of a tenant were to be recognised, what prevents him from transferring the building to any body he likes who is totally unconnected with him or who is not dependent on him such as a temple, a church, a mosque, a hospital, a foreigner, a multinational company and any other person of the country? The Legislature could never have intended to confer such a right on him and exclude the right of a landlord to get back possession of his building for ever even after the death of the tenant with whom he had entered into contract initially. Perhaps even in the case of a person who may succeed under Sub-clauses (i) and (ii) of Section [5\(11\)\(c\)](#) there can be no further devolution after his death again under these Subclauses. This question however need not be pursued in this case. (However see Para 602 Vol. 27 Halsbury's Laws of England 4th Edn.). **When in the case before us the Legislature has restricted the right to inherit the right to the tenancy of the premises let out for business, trade or storage to any member of a tenant's family carrying on business, trade or storage with the tenant at the time of his death it is not open to the Court by judicial construction to extend the said right to persons who are not members of the tenant's family who claim under testamentary succession. “**

18. The position was further clarified with regard to the bequeathing the tenancy rights in favour of somebody else's other than legal heirs in this judgment in paragraph 9 onwards:

“9. In Jaspal Singh v. the Additional District Judge, Bulandshahr and Ors. : AIR 1984 SC 1880, this Court had occasion to consider the validity of a bequest of the right of a tenant to continue to occupy the premises after the determination of the tenancy under U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 under a will. Section 3(a) of the U.P. Act referred to above defined the expression 'tenant' thus:

3. 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 ;

10. The appellant in that case claimed the right to tenancy held by one Nuabat Singh under the will of Naubat Singh. This Court held that the appellant would be a tenant within the meaning of Section 3(a) of that Act only when he was an heir but the appellant was not a son but only nephew of Naubat Singh. The said U.P. Act also contained a provision in Section 12(2) thereof which stated that in the case of non-residential building where a tenant carrying on a business in the building admitted a person who was not a member of his family as a partner or a new partner, as the case may be, the tenant should be deemed to have ceased to occupy the building. Under those circumstances this Court held at page 1885 thus:

From a survey of these provisions it will be clear that if a tenant parts with possession of the premises in his possession, the same would be treated as vacant... **In the case of non-residential building, when a tenant is carrying on business in the building, admits a person who is not a member of his family as a partner or new partner as the case may be, the tenant shall be deemed to have ceased to occupy the building. If a tenant sublets the premises, he is liable to ejectment.** Obviously, therefore, there are restrictions placed by the Act on the right of the tenant to transfer or sublet the tenancy rights and he can keep possession for the purpose of his family, for his business and for the business of his family members. He obviously cannot be allowed to transfer a tenancy right. A fortiori, the scheme of the Act does not warrant the transfer the tenancy right to be effective after his lifetime."

19. However, Punjab High Court in a case relating to East Punjab Urban Rent Restriction Act while interpreting Section 2(i) and 13(2) of the said Act held that a statutory tenant is competent to bequeath his tenancy right by executing a Will in favour of his son specifically excluding daughter. The relevant observations are in para 11 which are reproduced hereunder:-

"11. The competency of a statutory tenant to transfer his tenancy rights by Will is here a matter which directly arises in this case and cannot, therefore, be avoided. In dealing with this question, keeping in view the relevant provisions of the East Punjab Urban Rent Restriction Act, 1949

(hereinafter referred to as the Rent Act), it must be appreciated that a bequest of tenancy rights by a statutory tenant in favour of a stranger cannot but stand on a different footing than one to his legal heirs. Whereas in the former, it would be the thrusting of 'uncontemplated strangers' in the premises, in the latter it would be no more than the coming in of some, if not all, of those upon whom the legislature has conferred a right to succeed to such tenancy rights. It is also well settled that an interest that can be inherited can be bequeathed too. On principle, therefore, no exception can be taken to the entitlement of a statutory tenant to bequeath his tenancy rights by Will to one or more of his legal heirs who would have succeeded to them had he died intestate."

20. To the same affect is the other judgment delivered in the case of Mahant Karam Singh Vs. Mulakh Raj (supra).

21. In the light of the judgment delivered by the Apex Court in the case of Bhavarlal (supra) it has been clarified that the rights of a tenant are heritable in favour of the legal heirs like any other property and as long as inheritance of the property even under a Will is in favour of one of those i.e. the members of the family who are likely to inherit after the death of the deceased and are not in favour of some outsiders the said act on the part of the deceased tenant by executing a Will in favour of one of the legal heirs would not constitute an act of sub-letting.

22. Another judgment delivered in the case of Tara Chand & Anr. Vs. Ram Prasad (1990) 3 SCC 526, the Hon'ble Supreme Court has considered the rights of inheritance of the legal heirs of a deceased tenant who was having a tenancy in the suit property for commercial purposes. By making a reference to the Constitution bench judgment in Gian Devi Anand Vs. Jeevan Kumar & Ors. and also relying upon 7 Judges Bench of the Apex Court in V. Dhanpal Chattiar Vs. Yesodai Ammal, 1980 1 SCR 334 has extracted some observations made by the Constitution Bench with reference to the inheritance of the commercial tenancy which is as under:

"We are of the opinion that in case of commercial premises governed by the Delhi Act, the Legislature has not thought in fit in the light of the situation at Delhi to place any kind of restriction on the ordinary law of inheritance with regard to succession. It may also be borne in mind that in case of commercial premises the heirs of the deceased tenant not

only succeed to the tenancy rights in the premises but they succeed to the business as a whole. It might have been open to the Legislature to limit or restrict the right of inheritance with regard to the tenancy as the Legislature had done in the case of the tenancies with regard to the residential houses but it would not have been open to the Legislature to alter under the Rent Act, the Law of Succession regarding the business which is a valuable heritable right and which must necessarily devolve on all the heirs in accordance with law. The absence of any provision restricting the heritability of the commercial tenancies notwithstanding the determination of the contractual tenancies will devolve on the heirs in accordance with law and the heirs who step into the position of the deceased tenant will continue to enjoy the protection afforded by the Act and they can only be evicted in accordance with the provisions of the Act. There is another significant consideration which, in our opinion, lends support to the view that we are taking. Commercial premises are let out not only to individuals but also to Companies, Corporation or anybody with juristic personality, question of the death of the tenant will not arise. Despite the termination of the tenancy, the Company or the Corporation or such juristic personalities, however, will go on enjoying the protection afforded to the tenant under the Act. **It Can hardly be conceived that the Legislature would intend to deny to one class of tenants, namely, individuals the protection which will be enjoyed by the other class, namely, the Corporations and Companies and other bodies with juristic personality under the Act. If it be held that commercial tenancies after the termination of the contractual tenancy of the tenant are not heritable on the death of the tenant and the heirs of the tenant are not entitled to enjoy the protection under the Act, an irreparable mischief which the Legislature would never have intended is likely to be caused."**

23. In view of the aforesaid the Apex Court observed:

"6. On the facts of the case it was held that the tenant who continues to remain in possession even after the termination of the contractual tenancy till a decree for eviction against him is passed, continues to have an estate or interest in the tenanted premises and tenancy rights in respect of commercial premises are heritable. There is no provision in the Act regulating the rights of its heirs to inherit the tenancy rights of the tenanted commercial or business premises. The tenancy rights devolved on the heirs under the ordinary law of succession. Accordingly it was held that the tenancy rights of Wasti Ram devolved on

all the heirs of Wasti Ram on his death. The ratio with equal force applies to the facts of this case.”

24. By referring to the judgment in the case of Bhavarlal Labhchand Shah (supra) it was observed:

“7. The ratio in Bhavarlal Labhchand Shah v. [Kanaiyalal Nathalal Intawala MANU/SC/0529/1986](#) : [1986]1SCR1 does not help the respondent. The facts therein was that the tenant by testamentary disposition "will" bequeathed his occupancy rights in the tenanted property in favour of the stranger legatee. The question was whether such a legatee is entitled to the benefit of continuance of tenancy under Bombay Rents, Hotel and Lodging House Rules Control Act, 1947. It was held that since the bequest was in favour of the third party, the testator thereby, cannot confer rights under the provisions of the Rent Act on the stranger who was not a member of the family. The march of law culminated in Giani Devi Anandi's case knocked of the bottom of A.C. Chatterjee's ratio. Similarly the foundation in Sita Ram v. [Govind MANU/RH/0013/1970](#), Balkesh and Anr. v. Shanti Devi and Ors. reported in 1972 RCT 285, Mohan Lal v. Jaipur Hosiery Mills Pvt. Ltd. reported in [MANU/RH/0168/1973](#) has been shaken and no longer remain to be good law.”

25. Taking note of the fact that the deceased tenant Smt. Anandi, in that case was inducted in the suit property for commercial purposes & which was determined under notice of 106 of Transfer of Property Act even thereafter continued to remain in possession as statutory tenant and who expired subsequently, it was held that:

“Smt. Anandi enjoyed the status as a statutory tenant of the premises even after the determination of the tenancy. Notwithstanding the termination of the contractual tenancy the jural relationship of the landlord and tenant between the respondent and Smt. Anandi under the Act was not snapped off. The heritable property or interest in the lease hold right in the tenancy continued to subsist in the tenant Anandi.

On her death, the rights to succession to an estate of the deceased owner vested immediately on his/her than nearest heirs and cannot be held in abeyance except when a nearer heir is then in the womb. The vested right can not be divested except by a retrospective valid law. The appellants by virtue of intestate succession under Hindu Succession Act, being Class I heirs, succeeded to the heritable interest in the lease hold right of a demised premises held by Smt. Anandi. They, thereby, stepped into the shoes of the tenant. They continued to remain in

possession as on the date of the suit as statutory tenants. Thereby, they are entitled to the protection of their continuance as a statutory tenant under the Act.”

26. The fine distinction which has been made by the Hon’ble Supreme Court in the case of Bhavarlal (supra) has not been noticed in the later judgment of the Hon’ble Supreme Court in Vasant Pratap Pandit’s case (supra).

27. From the aforesaid it is apparent that the tenancy rights in a property can be inherited by the legal heirs which is let-out for a commercial purpose in accordance with the provisions of the Indian Succession Act after the death of the tenant. Thus in case the landlord wishes to restrict the rights of inheritance only in favour of one of the legal heirs, such Act on the part of the tenant may not be a cause of action giving rise to a suit for eviction of the property on the ground of sub-letting. Of course it may be an issue between the other legal heirs inter-se which is not the case before us.

28. Even otherwise a cause of action for filing a suit of eviction under Section 14(1)(b) of the Act arises only when a stranger is put in possession of the suit to the exclusion of the tenant who divest himself of the possession of the suit either in full or part. This aspect has also been dealt with by the Apex Court in the case of M/s. Bharat Sales Ltd. Vs. Life Insurance Corporation of India, reported in AIR 1988 SC 1240, which is a celebrated judgment on the issue of sub-letting and which reads as under:-

“4. Sub-tenancy or subletting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement of understanding between the tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out of the scene. Rather, the scene is enacted behind the back of the landlord, concealing the overacts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession over the demised property. It is the actual, physical and exclusive possession of that person, instead of the tenant, which

ultimately reveals to the landlord that the tenant to whom the property was let out has put some other person into possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub-tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sublet had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub-lease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lump-sum in advance covering the period for which the premises is let out or sublet or it may have been paid or promised to be paid periodically. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sublet.”

29. Applying the aforesaid principle to the facts of this case, it is not a case where any stranger has been brought into possession of the suit by the execution of the will by late tenant in favour of one of legal heirs. As a matter of fact, this aspect has not been dealt with in any of the judgments relied upon & cited at bar. However, the discussion which has undergone in various judgments of the Apex Court as discussed above and the judgment delivered by the Punjab and Haryana High Court on which reliance has been placed by the respondent crystallizes the issue. The position thus becomes clear i.e.

- (i) In case of a commercial tenancy, bequeathing the tenancy rights in such tenancy by tenant contractual or statutory only in favour of one of the legal heirs who was otherwise going to succeed such rights in the tenanted premises after the death of the deceased tenant would not constitute subletting so as attract the mischief of Section 14(1)(b) of the DRC Act.
- (ii) However, the Delhi Rent Control Act being a special Act and Section 14(1)(b) specifically imposing a restriction upon the tenant which would also be

applicable upon a statutory tenant i.e. not to sublet, assign or otherwise part with the possession of the suit property to a stranger to the exclusion of the tenant, bequeathing the rights under the tenancy to a stranger i.e. a person who is not going to inherit the tenancy even by the law of successions may give a cause of action to the landlord to contend that the bequeath in favour of a stranger or a person who would not inherit the tenancy in accordance with the law of succession is an act of sub-letting to attract mischief of Section 14(1)(b) of DRC Act.

30. This can also be explained in this manner that in a given situation if the other legal heirs who are not living with the tenant or are involved in other business or if a family settlement between the legal heirs of the deceased as reached between the life time of the tenant, exclusion of other legal heirs to succeed the tenancy rights would not give a cause of action for filing a suit in favour of the landlord on the ground of sub-letting under Section 14(1)(b) of the Act. Such action of the deceased may be a cause for an inter se fight between the legal heirs which is not a case before us.

31. In view of the aforesaid, I am of the considered view that it is not necessary for this Court to follow the view taken by another Judge of this Court in the case of Jagdish Kishore Kakar Vs. Krishna Baijal (supra), which was delivered in peculiar facts dealing with bequeath of tenancy rights in favour of adopted child of the deceased tenant. Consequently, the issue framed in paragraph 4 of this judgment is decided in favour of the respondents. Consequently, the appeal filed by the appellant is dismissed with no orders as to costs.

32. Copy of this order be sent to the first appellate Tribunal along with records forthwith. Interim orders, if any, stands vacated.

MOOL CHAND GARG,J

OCTOBER 29, 2010

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