ASHOK CHINTAMAN JUKER AND ORS. A

v.

KISHORE PANDURANG MANTRI AND ANR.

MAY 9, 2001

[D.P. MOHAPATRA AND BRIJESH KUMAR, JJ.] B

Rent Control and Eviction :

Bombay Rent Control Act, 1947—Section 5(11)(C)—Tenant—Meaning of—Tenancy—Joint or separate—Original tenant having died, rent receipts C *issued in the name of his elder son and after his death in the name of his widow—Eviction petition against the widow—Consent decree in favour of landlord—Execution—Appellant being second son of original tenant resisting on the ground of not being impleaded as a party in the suit—Tenability of—Held, the decree under execution does not suffer from any illegality or* D *infirmity—Tenancy being one, all the members of the family of the original tenant residing with him at the time of his death succeeded to the tenancy together—In the circumstances the widow who was impleaded as a tenant in the suit filed by landlord represented all the tenants and the decree passed in the suit is binding on all the members of the family covered by the tenancy—Moreover, trial court and appellate court concurrently holding* E *that appellant has not been residing in the premises when his elder brother was alive—Held, appellant has no justification to resist execution of the decree for possession of the premises by the landlord.*

Original tenant in respect of the suit premises died leaving two sons, one K and appellant no. 1. After his death, rent receipts were issued in the F **name of K and thereafter upon K's death, in the name of K's widow, respondent no. 2. Subsequently, landlord filed a suit for eviction against respondent no. 2. The parties settled the dispute and the suit was disposed of in terms of the said settlement. A decree was drawn up incorporating the terms of the settlement. Thereafter, landlord filed a petition for execution of the decree** G **in which a warrant of possession was issued.**

Appellant no. 1 along with his wife and children, filed objection against execution of the decree. The case of the appellants was that appellant no. 1 became a tenant of the suit premises on the death of his father. The landlord had filed a suit for eviction against respondent no. 2 without impleading him H

A as a defendant. In the circumstances, consent decree obtained in the suit was not binding on him.

The Executing Court rejected the objection filed by appellants, holding *inter alia* that the compromise decree was executable against them. Appeal filed by appellants in the Court of Small Causes was dismissed. Civil writ
B petition filed by them in High Court was also dismissed by a Division Bench. Hence the present appeal.

On behalf of the appellants, it was contended that Section 5(11) of the Bombay Rent Control Act, 1947 defined the term tenant to mean all the members of the family of tenant; that appellant no. 1 who was then a minor
C was undisputedly residing with his father, the original tenant along with his brother K and the status continued till the date of the filing of the suit; that the landlord having not impleaded appellant no. 1 as a defendant in the suit could not get delivery of possession of the property in execution of the consent decree which was not binding on him.

D

On behalf of the respondents, it was contended that the Trial Court and the Appellate Court concurrently held that appellant no. 1 had not been residing in the suit premises for a long time; that in fact he had shifted to another place and was residing in the premises owned by him; that when the landlord filed suit for eviction, appellant no. 1 was not a tenant in occupation
E of the suit premises and as such it was not necessary for the landlord to implead him as a defendant in the suit.

Dismissing the appeal, the Court

HELD : 1. The decree under execution does not suffer from any illegality
F or infirmity. Appellants have no justification on the facts as well as in law to resist execution of the decree for possession of the premises by the landlord. On the death of the original tenant the rent bills in respect of the premises in question were issued in the name of his elder son K and on his death the rent bills were issued in the name of his window respondent no.
G 2. It is not the case of appellant no. 1 that there was any division of the premises in question or that rent was being paid to the landlord separately by him. Indeed appellant No. 1 took the plea that he was paying the rent through respondent no. 2. Thus the tenancy being one, all the members of the family of the original tenant residing with him at the time of his death, succeeded to the tenancy together. In the circumstances the conclusion is
H inescapable that respondent no. 2 who was impleaded as a tenant in the suit

filed by the landlord represented all the members of the family covered by the tenancy. Further, the trial court and the appellate court concurrently held that appellant no. 1 has not been residing in the premises since the time when his elder brother was alive. Therefore, when the suit was filed there was no necessity for the landlord to implead appellant no. 1 or members of his family in the suit since the landlord had no cause of action for seeking a decree of recovery of possession from them. [634-D-H]

Ganpath Ladha **v.** *Sashikant Vishnu Shinde,* **[1978] 3 SCR 198;** *Kanji Manji* **v.** *The Trustees of the Port of Bombay,* **AIR (1963) SC 468;** *H.C. Pandey* **v.** *G.C. Paul,* **AIR (1989) 1470 and** *Textile Association (India) Bombay Unit* **v.** *Balmohan Gopal Kurup and Anr.,* **AIR (1990) SC 2053, referred to.**

2. There are two requisites which must be fulfilled before a person is entitled to be called 'tenant' under sub-clause (c) of Section 5(1) of Bombay Rent Control Act; first he must be a member of the tenant's family and secondly, he must have been residing with the tenant at the time of his death. Besides fulfilling these conditions he must have been agreed upon to be a tenant by the members of the tenant's family; in default of such agreement the decision of the Court shall be binding on such members. The issue that arises for consideration in such cases is whether the tenancy is joint or separate. In the former case notice on any one of the tenants is valid and a suit impleading one of them as a defendant is maintainable. A decree passed in such a suit is binding on all the tenants. Determination of the issue depends on the facts and circumstances of each case. No inflexible rule or straight-jacket formula can be laid down for the purpose. [632-G; 633-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3759 of 2001.

From the Judgment and Order dated 6.11.2000 of the Bombay High Court in C.W.P. No. 5768 of 2000.

Dhruv Mehta, S.K. Mehta and Ms. Shobha for the Appellants.

Bhim Rao M. Naik, P.N. Puri and A.V. Jain for the Respondents.

The Judgment of the Court was delivered by

D.P. MOHAPATRA, J. Leave granted.

One Chintaman Keshav Juker was the tenant in respect of the suit

premises, described as no. R/o 6, Mantri Building, Ground Floor, Bhendi Lane, Gamdevi, Bombay. He died in the year 1958 leaving two sons, Kesrinath Chintaman Juker (appellant No. 1 herein) and Ashok Chintaman Juker. Ashok was then a minor. After the death of Chintaman the rent bills (rent receipts) were issued in the name of Kesrinath. Kesrinath died in 1981. Thereafter the rent bills were issued in the name of his widow Smt. Kishori Kesrinath Juker (respondent no. 2 herein). Kishore Pandurang Mantri the landlord (respondent No.1 herein) filed the suit for eviction against respondent No.2. The parties settled the dispute and the suit was disposed of in terms of the said settlement by the order dated 31.1.1994 which reads as follows:

"Order

Both plaintiff and defendant alongwith their respective advocates are present. Both plaintiff and defendant admits the contents of the consent terms as well as their respective signatures. Therefore the Consent Terms are taken on record and marked Ex.A."

The decree was drawn up incorporating the terms of the settlement. The respondent No.1 filed the petition for execution of the decree dated 31.1.1994 in which a warrant of possession was issued on 23rd November, 1994. The appellants filed objection against the execution of the decree which was registered as Notice No. 66 of 1994.

The executing court by the order dated 30th September, 1998 rejected the objection filed by the appellants and dismissed Notice No.66/94 holding *inter alia* that the compromise decree is executable against them. The appeal filed by the appellants i.e. Appeal No.620/1999 was dismissed by the Court of Small Causes, Bombay Bench by order dated 8.9.2000. Civil Writ Petition No. 5768 of 2000 filed by the appellants was dismissed by a Division Bench of the Bombay High Court by the judgment/order dated 6th November, 2000. The said judgment/order is under challenge in this appeal filed by special leave.

The case of the appellants, shorn of unnecessary details, is that the appellant No.1, who is the husband of appellant No.2 and father of appellant Nos.3 to 5 became a tenant of the suit premises on the death of his father Chintaman in 1958. Therefore, he was entitled to occupy the premises as a tenant. The respondent No.1 filed a suit for eviction against respondent No.2 Smt Kishori Kesrinath Juker without impleading him (appellant No.1) as a defendant. In the circumstances the consent decree obtained in the suit is not

binding on appellant No.1 and members of his family who are residing with him. They cannot, therefore, be evicted in execution of the said decree.

The gist of the case of the respondent No.1 is that on the death of the original tenant Chintaman the rent bills were raised in the name of Kesrinath and after his death in the name of his widow the respondent no.2. The appellant No.1 was not accepted as a tenant by the landlord. Indeed he has not been residing in the suit premises since 1962. In such circumstances it was not incumbent on the part of the respondent No.1 to implead the appellant No.1 as a defendant in the suit and he has no right to obstruct delivery of possession of the premises in execution of the decree.

Sri Dhruv Mehta, learned counsel for the appellants strenuously urged that in view of the provision in section 5(11) (c) of the Bombay Rent Control Act, 1947 (hereinafter referred to as 'the Act') defining the term 'tenant' to mean all the members of the family of the tenant and appellant No.1 who was then a minor was undisputedly residing with his father Chintaman, the original tenant; therefore he was a tenant alongwith his brother Kesrinath and the status continued till the date of the filing of the suit. The landlord having not impleaded appellant no.1 as a defendant in the suit cannot get delivery of possession of the property in execution of the consent decree which is not binding on him.

Per contra Shri Bhim Rao M. Naik, learned senior counsel appearing for the respondents contended that the trial court and the appellate court concurrently held that the appellant No.1 had not been residing in the suit premises since 1962. In fact he had shifted to Kalyan and was residing in the premises owned by him there. He had also booked another accommodation at Borivli. Therefore, in the year 1992 when the respondent No.1 filed the suit for eviction the appellant No.1 was not a tenant in occupation of the suit premises and as such it was not necessary for the landlord to implead him as a defendant in the suit. The learned counsel further contended that the appellant No.1 having taken the stand that he was staying in the suit premises and he was paying the rent through his sister-in-law respondent No.2 after death of his brother Kesrinath which has been disbelieved by the trial court and the appellate court, the High Court was right in declining to interfere with the order passed by the trial court rejecting the objection to the execution of the decree filed by the appellants which was confirmed by the appellate court.

Before considering the case of the appellants on merits it is necessary to record the finding and observations made by the appellate court, which are

A quoted below:

> "The evidence go to show that in 1962 or thereafter the present Obstructionists Ashok shifted to Kalyan. Not only that but thereafter he has acquired premises at Kalyan and booked the premises at Borivli. We are not concerned with these premises and not necessary to give all particulars of those premises but this is an admitted fact because the witness has admitted in the cross examination. Not only that but in the co. i.e. on the place of employment said Ashok Obstructionist No.1 has given his address of correspondence at Kalyan. This goes to show that his so called accrued right of tenancy has been either waived or the alleged right of tenancy which is acquired under section 5(11)(c) has been surrendered or no right has been claimed at all."

In sub-section(11) of section 5 of the Act the expression 'tenant' means any person by whom or on whose account rent is payable for any premises and include -(a) such sub-tenants and other persons as have derived title under a tenant before the coming into operation of this Act; (b) any person remaining, after the determination of the lease, in possession, with or without the assent of the landlord, of the premises leased to such person or his predecessor who has derived title before the coming into operation of this Act; (c) any member of the tenant's family residing with him at the time of his death as may be decided in default of agreement by the Court. The language of the provision indicates that the definition of the term is an inclusive one and wide in its amplitude. In the present case we are concerned with clause (c) of sub-section(11) of section 5 which provides that 'tenant' includes any member of the tenant's family residing with him at the time of his death as may be decided in default of agreement by the Court. There are two requisites which must be fulfilled before a person is entitled to be called 'tenant' under sub-clause (c); first he must be a member of the tenant's family and secondly, he must have been residing with the tenant at the time of his death. Besides fulfilling these conditions he must have been agreed upon to be a tenant by the members of the tenant's family; in default of such agreement the decision of the Court shall be binding on such members. The further question that arises for consideration is whether a member of the family of the original tenant who claims to have been residing with the tenant at the time of his death can resist execution of a decree passed against a member of the tenant's family who undisputedly was accepted by the landlord as a tenant on the death of the original tenant.

The question that arises for consideration in such cases is whether the tenancy is joint or separate. In the former case notice on any one of the tenants is valid and a suit impleading one of them as a defendant is maintainable. A decree passed in such a suit is binding on all the tenants. Determination of the question depends on the facts and circumstances of the case. No inflexible rule or straight-jacket formula can be laid down for the purpose. Therefore, the case in hand is to be decided in the facts and circumstances thereof.

In the case of *Ganpath Ladha* v. *Sushikant Vishnu Shinde,* [1978] 3 SCR 198 a Bench of three learned Judges of this Court construing the provision of section 5(11)(c) of the Bombay Rent Act, 1947 held :

> "The Act interferes with the landlord's right to property and freedom of contract only for the limited purpose of protecting tenants against exercise of the landlord's power to evict them in these days of scarcity of accommodation by asserting superior rights in property or trying to exploit his position by extracting too high rents from helpless tenants. The object was not to deprive the landlord altogether of his rights in property which have also to be respected."

In the case of *Kanji Manji* v. *The Trustees of the Port of Bombay,* AIR (1963) SC 468, a bench of three learned Judges of this Court, construing the terms of the deed of assignment, observed as follows:

> "The argument about notice need not detain us long. By the deed of assignment dated February 28, 1947, the tenants took the premises as joint tenants. The exact words of the assignment were that "... the Assignors do and each of them both hereby assign and assure with the Assignees as Joint Tenants...". The deed of assignment was approved and accepted by the Trustees of the Port of Bombay, and Rupji Jeraj and the appellant must be regarded as joint tenants. The trial Judge, therefore, rightly held them to be so. Once it is held that the tenancy was joint, a notice to one of the joint tenants was sufficient, and the suit for the same reason was also good. Mr. B. Sen, in arguing the case of the appellant, did not seek to urge the opposite. In our opinion, the notice and the frame of the suit were, therefore, proper, and this argument has no merit."

This Court in the case of *H.C. Pandey* v. *G.C. Paul J,* AIR (1989) SC 1470 taking note of the settled position that on the death of the original

A tenant, subject to any provision to the contrary either negativing or limiting the succession, the tenancy rights devolve on the heirs of the deceased tenant, held that it is a single tenancy which devolves on the heirs. There is no division of the premises or of the rent payable thereafter and that is the position as between the landlord and the heirs of the deceased tenant. In
B other words, the heirs succeed to the tenancy as joint tenants. This Court further held that the respondent acted on behalf of the tenants; he paid rent on behalf of his father and he accepted notice on behalf of all; in the circumstances the notice served under section 106 of the Transfer of Property Act on the respondent was sufficient and it was a valid notice.

C In the case of *Textile Association (India) Bombay Unit* v. *Balmohan Gopal Kurup and another,* AIR (1990) SC 2053, this Court on the facts and circumstances stated therein took the view that the *ex-parte* decree obtained against mother and brother was not binding against the respondent therein.

In the case on hand, as noted earlier, on the death of the original tenant
D Chintaman the rent bills in respect of the premises in question were issued in the name of his elder son Kesrinath and on his death the rent bills were issued in the name of his widow Smt.Kishori Kesrinath Juker. It is not the case of the appellant no.1 that there was any division of the premises in question or that rent was being paid to the landlord separately by him. Indeed the
E appellant no.1 took the plea that he was paying the rent through Smt. Kishori Kesrinath Juker. Thus the tenancy being one, all the members of the family of the original tenant residing with him at the time of his death, succeeded to the tenancy together. In the circumstances the conclusion is inescapable that Smt. Kishori Kesrinath Juker who was impleaded as a tenant in the suit filed by the landlord represented all the tenants and the decree passed in the
F suit is binding on all the members of the family covered by the tenancy. In the circumstances the decree passed in terms of the compromise entered between the landlord and Smt. Kishori Kesrinath Juker can neither be said to be invalid nor inexecutable against any person who claims to be a member of the family residing with the original tenant, and therefore, a 'tenant' as
G defined in section 5(11)(c). The position that follows is that the appellants have no right to resist on the ground that the decree is not binding on them. Further, the trial court and the appellate court concurrently held that the appellant no.1 has not been residing in the premises since 1962 i.e. when his elder brother Kesrinath was alive. Therefore, when the suit was filed in the year 1992 there was no necessity for the landlord to implead appellant no.1
H or members of his family in the suit since he (landlord) had no cause of action

for seeking a decree of recovery of possession from them. In that view of the matter the decree under execution does not suffer from any illegality or infirmity. Viewed from any angle the appellants have no justification on the facts as well as in law to resist execution of the decree for possession of the premises by the landlord. The Executing Court rightly rejected the objection filed by the appellants against execution of the decree and the appellate court and the High Court rightly confirmed the said order. This appeal being devoid of merit is dismissed with costs which is assessed at Rs. 10,000.

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M.P. Appeal dismissed.