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CHITRANJAN BURMAN

v.

OM PRAKASH BAJORIA AND ORS.

OCTOBER 4, 2001

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[SYED SHAH MOHAMMED QUADRI AND S.N. PHUKAN, JJ.]

Rent and Eviction:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947:

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S.11(1)(d)—Proper tender of rent—Eviction of tenants sought on ground of non-payment of rent and for personal requirement—Tenanted premises, a shop, belonging to Hindu Undivided family—Tenants' plea that rent was tendered by money order to one of the co-owners, who refused to accept the same—That since landlords own many residential and non-residential buildings, they did not reasonably require premises in good faith—High Court rejecting both the grounds of landlords, but remanding the case to first appellate court with regard to default for two months—Appeals by landlords as also by tenants—Held, in the absence of notice to tenants that Karta of family alone was entitled to receive rent, rent having been sent by money order to one of the co-owners and one of the plaintiffs and she having refused to receive the same, there was a valid tender—High Court committed no illegality in coming to the conclusion it did on this aspect—Tenants tendered rent to one of the co-owners and one of the plaintiffs who refused to receive the same—This should not result in a trap to sue tenants for eviction on ground of non-payment of rent—Since there has been a proper tender of rent by tenants and improper refusal to receive the same by landlords, it was unnecessary for High Court to remand the case to first appellate Court to ascertain whether there was default in payment of rent for the two months mentioned in its judgment—Appeal of tenants allowed and that of landlords dismissed—Hindu Law—Landlord-tenant matter—Rent tendered to one of the members of Hindu undivided family who refused to receive the same—Held, a valid tender.

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Priya Bala Ghosh (Smt.) and Ors. v. Bajranglal Singhania & Ors., [1993] Suppl. 1 SCC 24, relied on.

Code of Civil Procedure, 1908:

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Order 22, Rules 1 and 2—Abatement by party's death—Appeal by tenants

against their eviction under Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947—Death of some of appellant-tenants—Held, there is no provision in the Act conferring right on heirs of a tenant, protection afforded by Act is available only to a tenant and not to his heirs or legal representatives—Statutory tenancy is not heritable and on death of some of the appellants, their legal representatives did not have any interest and in view of r.1 appeal did not abate and not bringing on record the legal representatives was inconsequential—Cause of action survived to other appellants and they rightly prosecuted second appeal in High Court having regard to provisions of r. 2.

Constitution of India, 1950:

Article 136—New plea—Held, cannot be entertained as the same was not raised in second appeal before High Court.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 975 of 1998.

From the Judgment and Order dated 30.9.97 of the Patna High Court in Second Appeal No. 29 of 1980 (R).

WITH

C.A. No. 3972 of 1998.

S.B. Sanyal, A.K. Pandey, Ashok Pandey, Ms. Monika Verma, K. Pandey, Devashish Bharuka, M.S. Mollah, Sunil Gupta, Vivek Vishnoi, S.K. Singh and Gopal Prasad for the appearing parties.

The following Order of the Court was delivered :

These two appeals, by special leave, are from the judgment of the High Court of Patna, Ranchi Bench, in Second Appeal No. 29 of 1980 dated September 30, 1997. They arise under the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1947 (for short, 'the Act'). Civil Appeal No. 975 of 1998 is by the tenants (referred to in this judgment as 'Burmans') and Civil Appeal No. 3972 of 1998 is by the landlords (referred to in this judgment as 'Bajorias').

The facts giving rise to these appeals may be stated in brief to appreciate the controversy in them. Title Suit No. 111 of 1974 was filed in the Court of Munsiff, Ranchi by Bajorias against Lachmi Sahu, the original tenant and the predecessor-in-interest of Burmans, for his eviction from shop No. 1 measuring 6 x 8 x 6 feet (part of Municipal holding No. 1184), Ward II. Randhir Prasad

A Street, Upper Bazar, Ranchi (hereinafter referred to as 'the shop'). The eviction was sought on two grounds : (i) non-payment of monthly rent of Rs. 20 for a period of more than three years from February 1971 to June 1974, under clause (d) of sub-section (1) of Section 11; and (ii) reasonable personal requirement of Bajorias in good faith under clause (c) of sub-section (1) of Section 11 of the Act. The original tenant contested the suit on both the grounds. With regard to default, his case was that the rent was paid to the first plaintiff in the suit, namely, Atma Ram Bajoria, but when he refused to receive the same, it was being sent by money order which was being returned as 'refused'. The personal requirement of the Bajorias was also denied stating that they held many residential as well as non-residential buildings and, therefore, did not reasonably require the premises in good faith for their occupation. On both the grounds the trial court found against the Bajorias and dismissed the suit. On appeal, the learned Judicial Commissioner, Chhota Nagpur, Ranchi allowed the appeal of the Bajorias, set aside the findings of the trial court on both the grounds and decreed the suit. The Burmans carried the matter in appeal to the High Court - Second Appeal No. 29 of 1980. By the impugned judgment, the High Court reversed the findings of the 1st Appellate Court on both the grounds but thought it fit to remand the case to the 1st Appellate Court to decide as to whether there had been default in payment of rent for the month of March 1972 and August 1973. Thus, the High Court disposed of the Second Appeal on September 30, 1977. Insofar as the grounds of default in payment of rent and personal requirement were held against the Bajorias, they filed Civil Appeal No. 3972 of 1998 and aggrieved by the remand of case to the 1st Appellate Court in regard to default for two months indicated above, the Burmans filed Civil Appeal No. 975 of 1998.

F Mr. Sunil Gupta, the learned counsel appearing for the Bajorias, has strenuously contended that the arrears of rent not having been paid for a long period of three and a half years, the Burmans were liable to be evicted and that the plea of valid tender of rent by them was found to be incorrect by the 1st Appellate Court; the High Court ought not to have interfered with the finding of fact. Therefore, the appeal has to be allowed. The second contention of Mr. G Gupta is with regard to reasonable requirement; it is submitted that the approach of the High Court is erroneous and that the Appellate Court held in favour of Bajorias, therefore, they are entitled to an order of eviction on that ground as well. He has also argued that the impugned order of the High Court is a nullity and this Court may be pleased to make a declaration to that effect.

H We shall take up the last point first.

The Second Appeal, referred to above, was filed by the legal representatives of late Lachmi Sahu. Two of them, namely, Kishori Lal Burman and Shankar Lal Burman died in 1991 and 1993 respectively. Their legal representatives were not brought on record before the High Court disposed of the appeal by the impugned judgment. Therefore, contends Mr. Gupta that on the principle that disposal of the second appeal on merit may lead to passing of inconsistent orders by the Court, it ought to have been dismissed by the High Court. In regard to the second limb of the contention of Mr. Gupta it may be noted here that in these appeals both the Burmans as well as the Bajorias filed Interlocutory Applications to bring on record the legal representatives of the said two persons which were allowed and their legal representatives were brought on record. Mr Gupta now submits that in their applications the Bajorias simply copied all that was stated in the applications of the Burmans, namely, that Chitranjan Burman was *karta* of the joint family which is in fact incorrect, therefore, the Interlocutory Applications filed by Bajorias to recall the order of this Court dated February 2, 1998, may be allowed. We are afraid we cannot accept this contention. Once the Bajorias have chosen to adopt the averments contained in the application of the Burmans, they are bound by it and cannot be allowed to wriggle out of it. As such the order passed by this Court on February 17, 1998 allowing substitution application, which is in the nature of consent order cannot be recalled. In effect it will be treated that the substituted parties are impleaded in these appeals.

The contention, the impugned judgment of the High Court is nullity, cannot be entertained; besides it also lacks substance. There is a good reason as to why such a plea cannot be permitted to be raised by the Bajorias in this appeal. This ground was available to them when the Second Appeal was argued in the High Court. As they have not taken the point before the High Court, they cannot be allowed to urge a new point in these appeals under Article 136 of the Constitution.

Even on merit the contention must fail. There is admittedly no provision in the Act conferring right on the heirs of a tenant. The protection afforded by the Act is available only to a tenant and not to his heirs or legal representatives. It follows that the statutory tenancy is not heritable. If that be so, on the death of Kishori Lal Burman and Shankar Lal Burman their legal representatives did not have any interest in the Second Appeal and in view of the provisions of Order 22 Rule 1 of the Code of Civil Procedure it did not abate and not bringing on record their legal representatives was inconsequential. *The cause of action*

A survived to the other appellants and they rightly prosecuted the Second Appeal in the High Court having regard to the provisions of Order 22 Rule 2 of the Code. For these reasons, the judgment passed by the High Court in the Second Appeal cannot be said to be a nullity.

B Reverting to the ground of eviction of Burmans, a big fight is on in respect of a small shop fetching a monthly rent of Rs. 20 between the landlords (Bajorias) who own other residential as well as non-residential buildings and the tenants (Burmans) who are running business of jewellery, both are well placed. It is not a case of a wealthy landlord filing a case of eviction against a poor tenant.

C Insofar as the ground of personal requirement under Section 11(1)(c) of the Act is concerned, the trial court recorded the finding that the personal requirement of the shop by the Bajorias is not reasonable and *bona fide*. This was confirmed by the High Court. We are therefore, not inclined to go into the correctness of finding of fact in these appeals.

D The next point relates to default in payment of rent for the period in question.

The substantial question of law framed by the High Court on the ground of default reads as follows :

E “Whether by remitting rent to one of the co-plaintiffs, the defendants - respondents could be said to be defaulter and liable to eviction?”

F The High Court held that by sending rent to Anar Devi, one of the plaintiffs, the defendants are safe of being defaulter as contemplated under Section 11(1)(d) of the Act.

The finding recorded by the trial court and confirmed by the High Court turns on the question : whether the tender of rent by Burmans was valid and refusal to receive the same by Bajorias was unjustified.

G Here, it will be apt to refer to the definition of “landlord” :

H “landlord” includes the person who, for the time being is receiving, or is entitled to receive the rent of a building whether on his own account or on behalf of another, or on account or on behalf or for the benefit of himself and others or an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled

to receive the rent, if the building were let to a tenant.”

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A perusal of the clause, extracted above, shows that within the meaning of landlord is included a person who for the time being is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of the other or on account or on behalf of the benefit of himself or others, or an agent, trustee, executor, administrator, receiver or guardian or who so receives the rent or they entitled to receive the rent if the building were let to a tenant.

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Admittedly, the premises was purchased by Khem Raj, predecessor-in interest of the Bajorias. On his death all his heirs became the owners in accordance with the provisions of the Hindu Succession Act. Anar Devi is admittedly one of the co-owners.

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Lachmi Sahu, predecessor-in interest of Burmans, was admittedly paying the monthly rent to Atma Ram Bajoria, the first plaintiff. From the record, it appears that in Title Suit No. 27 of 1970 in the Court of learned Subordinate Judge, Ranchi, an order of attachment directed the defendant therein (Anar Devi) to deposit the rent in Court. We may note here that though Mr. Gupta pointed out that in the said title suit all the Bajorias were also parties, a perusal of the said order shows that only Anar Devi was mentioned therein. Accordingly, till January 1971, before the period in question, Lachmi Sahu deposited the rent of the shop in the said Court. The attachment was raised on January 15, 1971 and the said Lachmi Sahu was served with a notice informing him of the release of rent from the attachment and directing that after that notice the rent of whatever kind be paid to the defendant (Anar Devi) and the rent before the release of the attachment be deposited in Court. Relying on that notice the Burmans claimed to have tendered the rent by money order in the name of Anar Devi. In their written statement the Burmans stated that the monthly rent of the shop was attached by the order of the Court in Title Suit No. 27 of 1970 of the Court of Subordinate Judge, Ranchi and the monthly rent upto the month of January 1971 was deposited in Court in pursuance of the order passed by the Court. The monthly rent for the month of February 1971 along with the rent for the remaining period of January 1971 was tendered to plaintiff No. 1 (Atma Ram Bajoria) by the deceased Lachmi Sahu in or about the early part of March 1971 and on his refusal to receive the said rent, the same was remitted through postal money order to him and likewise the rent for the succeeding months also has been sent through money order at his correct address, but the first plaintiff has persistently refused to receive the same.

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A On the basis of this plea it is urged by Mr. Sanyal that there was a valid
tender and the refusal was unjustified and illegal, as such the alleged default
in payment of rent cannot give any cause of action under clause (d) of Section
11(1) of the Act to the Bajorias to seek eviction of the Burmans. A perusal of
B the documentary evidence Exhibits 1 to 1B and money order receipts, Exhibits
E to E36 discloses a different story. All these money order receipts are addressed
to Anar Devi and not to the first plaintiff - Atma Ram Bajoria. Mr Sanyal,
however, sought to explain away the variance stating that Anar Devi is also a
plaintiff; she is plaintiff No. 4, if in the written statement we read plaintiff No.
4 for plaintiff No. 1 there will be no difference between the pleadings and the
C proof. We are afraid we cannot accede to the contention of the learned counsel
for reasons more than one. Firstly, the written statement was filed in May 1977
and till October 2001 the Burmans did not choose to have their alleged mistake
in the written statment corrected, though the case went through several
vicissitudes during the last 24 years. Notwithstanding that aspect a plain reading
of paragraph 7 of the written statement does indicate that the Burmans intended
D Atma Ram Bajoria and not Anar Devi when they used the words plaintiff
No. 1.

E Be that as it may, the fact remains that the rent for the period in dispute
was tendered by the Burmans through money orders as seem from receipts -
Exhibits E to E 36 - addressed to Anar Devi who is plaintiff No. 4 in the present
suit for eviction of the Burmans. She gave no explanation as to why she refused
to receive the rent. Her refusal is obviously unjustified if not mala fide. If as
in this case there has been a tender of rent to Anar Devi, one of the co-owners,
of the property and improper refusal to receive the same by her it cannot be
said that there is no tender of rent and consequently the Burmans cannot be said
to be defaulter in payment of the rent.

F It appears that the Bajorias refused to receive the rent for the shop on
the ground that Money Orders were not addressed to the first plaintiff (Atma
Ram Bajoria) who was the *karta* of the family and was entitled to receive the
rent. It is relevant to note here that in paras 1 and 2 of the plaint it was stated
G that the plaintiffs are Hindus constituting Joint Hindu Family governed by
Mitakshara School of Hindu Law and that plaintiff No. 1 is the eldest brother
and in law, in fact, the *karta* of the Joint Hindu Family. This fact is denied by
the Burmans in their written statement. The averments in the written statement
that the rent was tendered to Atma Ram Bajoria does not indicate that the
Burmans were conscious of the fact that Atma Ram Bajoria as *karta* of the joint
H family alone was entitled to receive the rent. The shop is a joint property and

therefore it cannot be disputed that one of the members of the family being a co-owner was entitled to receive the rent.

Atma Ram Bajoria (plaintiff No. 1) cannot pretend that he was not aware of the sending of rent by money order to his mother Anar Devi c/o Atma Ram Bajoria at his address. At no point of time did he inform the Burmans that he is the *karta* of the family and that rent should be paid/sent to him alone. He kept quiet for a long period of three years and a half. In the absence of specific notice to Burmans that plaintiff No.1, namely, Atma Ram Bajoria, being the *karta* of the family is alone entitled to receive the rent, it cannot be said that there has been no proper tender of the rent. Anar Devi is one of the plaintiffs. All the plaintiffs are staying together in the same house. It is not the case of Bajorias that the rent was not tendered to her. If the rent was properly tendered to her, which we think was justified in the absence of notice to the Burmans that Atma Ram Bajoria being *karta* was alone entitled to receive the rent, there was a valid tender. When rent was admittedly tendered to one of the co-owners, one of the plaintiffs in the suit, it would be unjust and atrocious to hold that there was no valid tender of rent and pass an order of eviction of the Burmans on that ground. We are, therefore, unable to say that the High Court has committed any illegality in coming to the conclusion it did on this aspect.

Mr. Sanyal has placed reliance on a judgment of this Court in *Priya Bala Ghosh (Smt.) and Ors. v. Bajranglal Singhania & Ors.*, [1993] Suppl. 1 SCC 24. In that case the rent for the month of September was not paid but for October and November money order was sent on November 28, which was received in December. The question was whether the tenant has committed default in payment of rent. The landlord therein contended that the payment of rent by money order was not a valid tender and, therefore, the tenant had committed default in payment of rent. This Court held that Section 13(1) of the said Act permitted the tenant to remit the rent due, by postal money order to the landlord and if the latter refuses to accept the rent, the remittance of rent by money order within the stipulated time could be availed as a proper defence and it was held that payment of rent by sending the same through money order was a valid tender. This case, in our view, does not support the contention of Mr. Sanyal. However, the following observations aptly apply to the fact situation here :

“Why should a tenant who resorts to the latter mode of payment be evicted even though he has shown readiness and willingness to pay the rent due and payable by him to the landlord? The law has to be broadly

A construed because it is not intended to trap the tenant into a situation so that the landlord can evict him.”

The Burmans tendered the rents to Anar Devi one of the co-owners and one of the plaintiffs who refused to receive the same which should not result in a trap to sue them for eviction on the ground of non-payment of rent.

B As it is found that there has been a proper tender of the rent by Burmans and improper refusal to receive the same by Bajorias it was unnecessary for the High Court to remand the case to the 1st Appellate Court to ascertain whether there was default in payment of rent for the months of March 1972 and August 1973. The judgment under appeal to this extent is set aside. C Consequently, Civil Appeal No. 975 of 1998 is allowed and Civil Appeal No. 3972 of 1998 is dismissed. In the circumstances of the case, we direct the parties to bear their own costs.

I.A. Nos. 2 and 4 are dismissed.

D I.A. No. 3 is allowed.

We make it clear that the questions of determination of reasonable rent and the amount which Bajorias will be entitled to recover from the Burmans, are left open.

E R.P. C.A. No. 975/98 allowed.
C.A. No. 3972/98 dismissed.