

M/S KANHIYA SINGH SANTOK SINGH & ORS.

v.

KARTAR SINGH

(Civil Appeal No. 1525 of 2009)

MARCH 4, 2009

**[TARUN CHATTERJEE AND AFTAB ALAM, JJ.]**

*Code of Civil Procedure, 1908 – O.22 r.3 – Substitution of legal representatives – Eviction decree against tenant and his firm – Death of tenant during pendency of second appeal – Application for substitution of legal representatives of deceased – Dismissal of application and abatement of second appeal as applicants not tenant u/s. 3(vii) since they were not ordinarily carrying on business as members of family of deceased till time of his death – On appeal, held: Status of appellants as tenants was ambiguous – Hence, matter remitted to High Court – Rajasthan Premises (Control of Rent and Eviction) Act, 1950 – s. 3(vii).*

**The question which arose for consideration in this appeal was whether the two sons of the deceased-tenant could be substituted as his legal representatives under O. 22 r. 3 CPC to prosecute the second appeal filed by deceased against the eviction decree, pursuant to the provisions of s. 3 (vii) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950.**

**Partly allowing the appeal, the Court**

**HELD: 1.1 Considering the ambiguous position as regard the appellants relating to their status as tenants, it was necessary for the High Court to remit the matter to the trial court for a proper determination of the factual aspects. [Para 13] [1119-B]**

A 1.2. Even if it is proved that the appellants were  
carrying on business with the original tenant late SS, this  
would not fulfill the requirements laid down under section  
3 (vii) of the Rajasthan Premises (Control of Rent and  
Eviction) Act, 1950 which necessitates that the heirs and  
B legal representatives of the tenant should have been  
carrying on business with him as his family members  
upto the time of his death. The submission that going by  
the settlement arrived at by the family it is amply clear that  
the family had partitioned and the brothers were living  
C independently of late SS and running their own business,  
cannot be accepted at this stage. The alleged settlement  
arrived at by the family and signed by its members do not  
conclusively point out to the fact that the members had  
separated and they ceased to exist as a Joint Hindu family  
D of late SS. It is evident from the settlement deed that at  
the time of the execution of the said document, the  
appellants were minors and it was signed by SS himself  
on their behalf. Moreover, it is apparent that the said  
document only distributed the capital of the business and  
did not in any way divide the business among the  
E members of the family. Thus the said document indicated  
shares of each party in the business to be carried on. The  
statement of the second witness who was a part of the  
settlement arrived as a witness, and had put his signature  
thereof as the same illustrates that the settlement was for  
F the partition of capital of the business and not the  
business in itself. It is evident that the appellants were the  
members of the same family to which late SS belonged.  
The only thing that needs to be determined is whether  
they were ordinarily carrying on business at the time of  
G his death. This should be decided by the trial court  
according to the provisions of O. 22 r. 5 CPC by  
production of oral and documentary evidence before the  
trial court. [Para 14] [1119-E, F, G, H; 1120-A,B; 1120-E]

H 1.3. The impugned Judgment of the High Court is set

aside. The matter is remitted back to the High Court, who in turn, would direct the trial court to take evidence in the manner indicated and after considering the evidence (documentary and oral) brought on record by the parties shall make a finding on the status of the appellants and the record, thereafter may be sent back to the High Court with the findings and the evidence that would be adduced and already on record and only thereafter, the High Court shall dispose of the second appeal. [Paras 16 and 17] [1121-B; 1122-C, D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1525 of 2009.

From the Judgment & Order dated 10.01.08 of the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur in S.B. Civil Second Appeal No. 486/2002.

Sushil Kr. Jain, Puneet Jain, Ashwin Kothmath and Pratibha Jain for the Appellants.

Shobha, Harish Sharma and Ramesh Pd for the Respondents.

The Judgment of the Court was delivered by

**TARUN CHATTERJEE, J.** 1. Leave granted.

2. This appeal is directed against the final judgment and order dated 10th of January, 2008 of the High Court of Rajasthan, at Jaipur being S.B. Civil Appeal No. 486 of 2002, whereby the High Court had dismissed the application filed by the appellants for being substituted as legal representatives of one Santok Singh who had died subsequently during the long drawn legal battle between the parties, and dismissed the Second appeal filed by the appellants as having been abated.

3. The facts leading to the filing of this appeal are stated briefly as under : -

A The dispute relates to a shop situated at Madanganj,  
District Kishangarh, Rajasthan. The appellants belonged to a  
joint family consisting of Santok Singh, father of the appellants  
(now deceased), and the appellants namely, Man Mohan Singh  
and Jaswant Singh. Their third brother namely, Balbeer Singh  
B had already separated during the lifetime of the father of the  
appellants and he runs his own business.

4. The appellants along with their father were carrying on  
business of motor spare parts as well as a Kerosene Retail  
outlet business. On 24th of February, 1997, the respondent filed  
C a suit for eviction against the father of the appellants Late  
Santok Singh (since deceased) and the firm owned by him  
namely M/s Kanhiya Singh Santok Singh on the ground of  
bonafide requirement. By an order dated 30th of July, 1997,  
D the Additional Civil Judge, Kishangarh, held that the respondent  
had failed to prove his *bonafide* requirement and, therefore,  
dismissed the suit. Thereafter, the respondent filed a first  
appeal before the Additional District and Sessions Judge,  
Kishangarh, Ajmer. On 5th of October, 2002, the First Appellate  
Court allowed the appeal and decreed the suit for eviction  
E against the father of the appellants, Santok Singh (since  
deceased) and his firm. Aggrieved by the aforesaid decree,  
late Santok Singh and the firm through late Santok Singh filed  
a Second Appeal before the High Court of Rajasthan at Jaipur  
being S.B. Civil Second Appeal No. 486 of 2002.

F 5. On 18th of September, 2006, the father of the appellants  
late Santok Singh died leaving behind his widow and three  
sons, out of whom the appellants being two of them, were living  
with late Santok Singh at the time of his death. The third son  
had already separated from the joint family and started a  
G business of his own. On 26th of October, 2006, the appellants  
filed an application for being substituted under Order 22 Rule  
3 CPC as legal representatives of late Santok Singh, having  
specifically mentioned in the said application that they were  
ordinarily carrying on business along with their father as the  
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members of his family till the time of his death.

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6. On 16th of April, 2007, the respondent filed a reply opposing the application filed by the appellants for substitution as legal representatives of late Santok Singh and prayed that the appeal be dismissed as abated.

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7. The High Court by the impugned order rejected the application and dismissed the appeal of the appellants as abated.

8. It is against this order of the High Court that the appellants have filed this Special Leave Petition, which on grant of leave was heard by us in the presence of the learned counsel appearing for the parties.

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9. The relevant issue which is to be determined in this appeal is whether the two sons of late Santok Singh can be substituted as his legal representatives under Order 22 Rule 3 CPC pursuant to the provisions of section 3 (vii) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (hereinafter referred to as the "Act" in short).

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10. Before delving further into the issue, it is necessary to reproduce the above mentioned section, namely section 3 (vii) of the Act which runs as under:

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3 (vii): "*tenant*" means-

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a. the person by whom or on whose account or behalf rent is, or, but for a contract express or implied would be payable for any premises to his landlord including the person who is continuing in its possession after the termination of his tenancy otherwise than by a decree for eviction passed under the provisions of this Act; and

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b. in the event of death of the person as is referred to in sub-clause (a), his surviving spouse, son,

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A daughter and other heir in accordance with the  
personal law applicable to him who had been, in the  
case of premises leased out for residential  
purpose, *ordinarily residing and in the case of*  
B *premises leased out for commercial or business*  
*purposes, ordinarily carrying on business with him*  
*in such premises as member of his family upto his*  
death. (emphasis supplied)

11. The learned counsel appearing on behalf of the  
respondent however contended at the first instance that the  
C appeal in this Court itself is not entertainable as the appellants  
cannot be substituted as legal representatives of late Santok  
Singh in spite of the fact that they are his sons, in view of the  
provisions of section 3 (vii) of the Act. It was his contention that  
D since the original tenant had died during the pendency of the  
Second Appeal, the Second Appeal filed by him before the  
High Court was bound to have been abated, unless his heirs  
and legal representatives who satisfied the requirements under  
E section 3 (vii) of the Act, were brought on record. Therefore he  
argued that the High Court had correctly rejected the application  
of the appellants finding them unfit to be declared as legal  
F representatives of late Santok Singh under Order 22 Rule 3 of  
the CPC, since they did not come within the category of  
“tenants” under section 3 (vii) of the Act. The respondent  
G contended that a partition had already taken place by way of  
family settlement in the family of the original tenant on 1st of  
August, 1974, and this fact was categorically admitted by him  
in his statement recorded on 31st of March, 1990. Therefore,  
the appellants were not ordinarily carrying on business as the  
H members of the family of late Santok Singh till the time of his  
death, to be substituted in his place and thus were not eligible  
to be brought on record as his heirs and legal representatives  
under Section 3 (vii) of the Act. This is so because only those  
legal representatives would become tenants in case of  
premises leased out for commercial or business purposes, who  
were ordinarily carrying on business with late Santok Singh as

members of his family upto his death. It is relevant to mention at this stage that simply because the appellants claimed to be in business at the time of his death with late Santok Singh, would not bring them within the definition of "tenant" unless they were carrying on business in the suit premises with late Santok Singh at the time of his death as a member of his family. Therefore, it was the contention of the respondent that since a partition amongst the members of the family of Late Santok Singh and the appellants had already taken place by virtue of a family settlement dated 1st of August, 1974 and the members of the family including the appellants had started their own business, it could not be said that the appellants were entitled to be substituted as legal representatives of late Santok Singh to prosecute the second appeal filed by him against the eviction decree nor they could be entitled to file this appeal in this Court.

12. The learned counsel appearing on behalf of the appellants on the other hand argued that the High Court was wrong in placing reliance only on one part of the deposition of Late Santok Singh where he had stated that all his three sons had separate business and he had his own individual business, before the Court of Civil Judge and Additional Chief Judicial Magistrate, Kishangarh, on 31st of March, 1990. Based on this, the High Court concluded that the appellants had separate business and were not part of the same business of Santok Singh at the time of his death, to be substituted as tenants in his place and thus could not be substituted as his legal representatives who could carry forward the appeal filed by late Santok Singh against the eviction decree passed against him. The learned counsel appearing for the appellants contended that the High Court had erroneously overlooked another part of the same deposition where late Santok Singh had mentioned, "Man Mohan Singh is my second son who is the manager of my shop". Therefore, according to the appellants, this in fact directly proved that at least one son namely Man Mohan Singh was helping his father in his own business at the time of his death and thus he fell within the meaning of "tenant" under

A Section 3 (vii) of the Act. From the deposition, it is not clear whether the appellants were in fact a part of the business of late Santok Singh and were carrying on business with him till the time of his death or not. On one hand, it is apparent that one son namely Balbeer Singh had a separate business, but the status of the other two sons cannot be ascertained clearly from the records before us. The fact that one of the appellants' was a manager of the disputed shop can have two meanings. The first one being that he was actually carrying on the business along with his father Santok Singh till the time of his death. The other being that the appellant Man Mohan Singh was only working as an employee in the shop of his father, his designation being that of a manager and was not a part of the same business. The High Court had overlooked this disputed question of fact and held that the three sons had separate business for which they could not fall under the category of "tenant" under the provisions of the Act. Furthermore, this question of fact cannot be decided without permitting the parties to lead evidence in respect of their respective cases and without coming to a finding on such question of fact by the court. In this state of affairs, pending the disposal of the Second Appeal, the High Court ought to have sent the case to the trial court to determine the status of the appellants as legal representatives of late Santok Singh after permitting the parties to adduce evidence, under the provisions of Order 22 Rule 5 of CPC, which deals exclusively with the determination of question as to the legal representatives of a deceased. For a proper understanding of the above stated position, it is necessary to reproduce the provision which runs as follows:

G *"Rule 5: Determination of question as to legal representative-* Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court.

H *Provided that where such question arises before an*

Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefore, and the Appellate Court may take the same into consideration in determining the question.”

13. Thus considering the ambiguous position regarding the status of the appellants relating to their status as tenants, it was necessary for the High Court to remit the matter to the trial Court for a proper determination of the factual aspects whether the appellants were in fact carrying on business with late Santok Singh at the time of his death by taking evidence and thereafter, come to a finding whether the appellants shall be brought on record in the second appeal as the legal representatives of late Santok Singh.

14. We need to take note of another aspect in this matter. It was contended by the respondent that even if it is proved that the appellants were carrying on business with the original tenant late Santok Singh, this would not fulfill the requirements laid down under section 3 (vii) of the Act which necessitates that the heirs and legal representatives of the tenant should have been carrying on business with him as his family members upto the time of his death. Therefore, it was his contention that going by the settlement arrived at by the family on 1st of August, 1974, it is amply clear that the family had partitioned and the brothers were living independently of late Santok Singh and running their own business. At this stage, we cannot accept this argument advanced by the learned counsel appearing on behalf of the respondent. In any view of the matter, the alleged settlement arrived at by the family and signed by its members do not conclusively point out to the fact that the members had separated and they ceased to exist as a Joint Hindu family of late Santok Singh. It is evident from the settlement deed that at the time of the execution of the said document, the appellants namely Jaswant Singh and Man Mohan Singh were minors and

A it was signed by Santok Singh himself on their behalf. Moreover,  
it is apparent that the said document only *distributed* the capital  
of the business and did not in any way divide the business  
among the members of the family. Thus the said document  
indicated shares of each party in the business to be carried  
B on. Again if we go through the statement of the second witness  
who was a part of the settlement arrived as a witness, and had  
put his signature thereof as the same, it further illustrates that  
the settlement was for the partition of capital of the business  
and not the business in itself. The above mentioned statement  
C is produced herein for a better understanding:

“ In my presence *partition of capital* of Joint Hindu Family  
of Kanhaiya Singh Santok Singh has been done in equal  
5 shares of Rs. 33, 923.64 today on 1.8.74 which they all  
have accepted before me having received and credited  
D in books and I have signed in the capacity of witness as  
desired by them.”

Therefore it is evident that the appellants were the  
members of the same family to which late Santok Singh  
E belonged. The only thing that needs to be determined is whether  
they were ordinarily carrying on business at the time of his  
death. This according to us should be decided by the trial Court  
according to the provisions of Order 22 Rule 5 of CPC as has  
already been stated here by production of oral and  
F documentary evidence before the trial Court.

15. However, we make it clear that any observation made  
by us in this judgment on the above aspect of the matter and  
also of the High Court, would not be taken as conclusive and it  
would be open to the court to come to a finding without being  
G influenced by the aforesaid observations made in this judgment  
and also the observations made by the High Court in the  
impugned judgment. It may be mentioned here that the parties  
would be at liberty to rely on any documentary evidence  
including the deed of settlement if not already produced in the  
H court which may be permitted to be produced and the trial Court

shall also permit the parties to adduce evidence in support of the respective cases and thereafter, come to a finding on the status of the appellants and send such findings along with the records to the High Court for final disposal of the second appeal.

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16. In view of our discussions made hereinabove, the impugned Judgment of the High Court is liable to be set aside and, accordingly, it is set aside.

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17. The matter is now remitted back to the High Court, who in turn, shall direct the trial Court to take evidence in the manner indicated above and after considering the evidence (documentary and oral) brought on record by the parties shall make a finding on the status of the appellants and the record, thereafter may be sent back to the High Court with the findings and the evidence that would be adduced and already on record and only thereafter, the High Court shall dispose of the second appeal. If the High Court is of the view that the appellants shall be substituted in place of late Santok Singh, in that case, the High Court shall decide the appeal on merits after giving hearing to the parties and after passing a reasoned judgment in accordance with law. In the event, the High Court finds that the appellants cannot be substituted in place of late Santok Singh, then the High Court shall pass an order disposing of the appeal as abated. The High Court shall direct the trial Court to take evidence and send the records with its findings within six weeks from the date of receipt of a copy of an order of the High Court to it.

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18. The appeal is accordingly allowed to the extent indicated above. There will be no order as to costs.

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N.J.

Appeal partly allowed.