

SMT. RANI DEVI
v.
BHOLE NATH AND ORS.

OCTOBER 22, 1991

[K. RAMASWAMY AND YOGESHWAR DAYAL, JJ.]

U.P. Urban Building (Registration of letting, rent and eviction) Act, 1972:

Sections 3(a)(2) and 21—Eviction of tenant—Whether married daughters of original tenants necessary parties to eviction proceedings—Whether non-impleadment vitiates proceedings and disentitles landlady to maintain action for ejection.

The appellant-landlady, filed a suit under s.21 of the U.P. Urban Building (Regulation of letting, rent and eviction) Act, 1972 for eviction of the tenant on the ground of *bona fide* requirement. The prescribed authority and the Appellate Tribunal found as a fact that the appellant's requirement was *bona fide* and decreed the suit. But, the High Court set aside the order on the sole ground that the married daughters of the original tenant, who were the necessary parties, were not impleaded and, therefore, the non-joinder of the necessary parties disentitled the appellant-landlady to have the ejection of the tenants, namely, the sons and the widow of the deceased tenant.

Allowing the appeal of the landlady, this Court,

HELD: 1.1 Section 3(a)(2) of the U.P. Urban Building (Regulation, of letting, rent and eviction) Act, 1972 postulates that tenant in relation to a building means a person by whom rent is payable, and on the tenant's death, in the case of a non-residential building, his heirs. Therefore, as defined under s.3(a)(2) all heirs of the tenants are the tenants who succeeded intestate as per the Hindu Succession Act, 1956. Consequently, the married daughters are tenants within the meaning of s. 3(a)(2), and entitled to succeed to the tenant's lease-hold rights under the Act, including not merely to the liabilities to pay rent but also to continue the business until duly ejected as per the provisions of the Act. [537 B-C]

1. 2 However, in the instant case, the original tenant died in 1965.

A Thereafter, the proceedings were initiated in 1974. Till then, one of the sons of the deceased tenant, namely, the first respondent was in occupation of the premises and did carry on business. The married daughters never participated, nor claimed interest in the business conducted by the first respondent and even before the death of the father, they were married and they were living with their husbands elsewhere. The Rent Appellate Tribunal has found that by necessary implication, the married daughters surrendered their tenancy rights inherited under the Act, since after the demise of the original tenant, the daughters evinced no interest to assert their rights. In view of this, their non-impleadment as respondents does not vitiate the action for non-joinder of them as necessary parties nor maintainability of the proceedings for ejection itself. [536 H, 537 AB, D-E]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 129 of 1986.

D From the Judgment and Order dated 12.5.1982 of the Allahabad High Court in Civil Misc. Writ Petition No. 13431 of 1981.

B.D. Agarwal and Indeever Goodwill for the appellant.

A.K. Srivastava for the Respondents.

E The following Order of the Court was delivered:

F This appeal by special leave has been filed by the landlady. She laid action under s.21 of the U.P. Urban Building (Regulation of letting, rent and eviction) Act, 1972 (for short 'the Act') for eviction of the tenant on the ground of *bona fide* requirement to start business by her son. The prescribed authority and the Appellate Tribunal found as a fact that the appellant required the premises *bona fide* to start the business. But the High Court allowed the writ petition, set aside the order on the sole ground that the married daughters of the original tenant, Lalu were not impleaded who are the necessary parties and, therefore, the non-joinder of the necessary-parties disentitle the landlady to have the ejection of the tenants namely the sons and the widow of the deceased tenant Lalu.

H The only question that arises in this case is whether the married daughters of the deceased tenant are necessary parties and that non-impleading them would disentitle the landlady to maintain the action for ejection. Admittedly, Lalu the original tenant died in 1965. Thereafter, the proceedings were initiated in 1974. Till then, one of the sons of Lalu,

namely, Bhole Nath was in occupation of the premises and did carry on business as admitted by him in affidavit Exhibit SA-II "that the deponent is the tenant of a portion of house No. 55, Thatheri Bazar, Allahabad on payment of Rs. 40/- per month as rent including electric charges". It is also not in dispute that the married daughters never participated, nor claimed interest in the business conducted by Bhole Nath. It is also an admitted fact that even before the death of the father they were married and they are living with their husbands elsewhere. Indisputably s.3 (a)(2) postulates that "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 (2) in the case of a non-residential building, his heirs." Therefore, as defined under s.3(a)(2) all heirs of the tenants are the tenants who succeeded intestate as per the Hindu Succession Act, 1956. Certainly, therefore, they are tenants within the meaning of s.3(a)(2). They are entitled to succeed to the tenant's lease-hold rights under the Act, including not merely to the liabilities to pay rent as contended by the appellant but also to continue the business until duly ejected as per the provisions of the Act. Whether non-impleadment of the married daughters would vitiate maintainability of the proceedings for ejection. The finding recorded by the Rent Appellate Tribunal that by necessary implication, the married daughters surrendered their tenancy rights inherited under the Act. After the demise of Lalu, the daughters evinced no interest to assert their rights, is well justified. Once that is found to be so, their non-impleadment as respondents does not vitiate the action for non-joinder of them as necessary parties nor maintainability of the proceedings for ejection itself. The High Court committed grave errors of law in allowing the writ petition and dismissing the application for ejection. The order of the High Court is set aside and that of the Prescribed Authority and the Tribunal are restored. It is not in dispute that the landlady offered a reasonable portion of the premises to the respondent to an extent of 3-1/2'x 6' in the Varanda but respondent had refused to accept that offer but in this Court the learned counsel for the respondents requested to allow the tenant to retain the portion offered. In fairness, Mr. Agarwal, learned senior counsel for the appellant, has not objected to it. Accordingly it is open to the tenant to occupy the portion offered by the appellant and vacate the other portion which is required by the petitioner for starting the business of her son. The appellant would carve out the portion in a suitable and convenient manner to run the business by the respondent. The appeal is allowed with the above modifications, but in the circumstances parties are directed to bear their own costs.

N.P.V.

Appeal Allowed.