

PETITIONER:
TARA CHAND AND ANR.

Vs.

RESPONDENT:
RAM PRASAD

DATE OF JUDGMENT 03/05/1990

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
SAIKIA, K.N. (J)

CITATION:
1990 SCR (3) 7 1990 SCC (3) 526
JT 1990 (3) 17 1990 SCALE (1)190

ACT:

Rajasthan Premises (Control of Rent and Eviction Act, 1950:Section 13(1)--Tenancy rights--Whether heritable--Heirs of tenant--Whether entitled to enjoy protection of Act.

HEADNOTE:

Smt. Anandi Bai wife of Appellant No. 1 and mother of Appellant No. 2 had a lease of suit shop in Jaipur for a period of 11 months beginning May 1, 1964 wherein she was carrying on small kirana business. The Respondent-landlord terminated the lease by a notice issued under section 106 of the Transfer of Property Act at the end of the term of the lease. However Anandi Bai continued to remain in possession and the landlord went on accepting the rent even after the termination of her tenancy and thus she became a statutory tenant. She died sometime in September 1966. Respondent-landlord initiated action for ejectment of her heirs-the appellants herein from the demised shop on the ground that on the death of Anandi Bai the appellants have no right to continue in occupation of the premises. The trial court dismissed the suit on the finding that Anandi Bai paid and the respondent accepted the rent after the determination of the lease, so she was holding over. The first appellate court confirmed the decree of the trial court though on different grounds. Second appeal by the plaintifflandlord was allowed by the High Court holding that since the heirs of the tenant had not carried on the business with Anandi Bai during her life time as family business they were not entitled to the benefits of the definition of 'tenant' as amended by Section 3(ii) of the Rajasthan Premises (Control) of Rent and Eviction) Amendment Act, 14 of 1976 and accordingly reversing the decrees of the courts below, the suit for ejectment of the appellants from the demised shop was decreed.

Allowing the appeal by special leave against the Judgment and Decree of the High Court preferred by the heirs of the tenant Anandi Bai, this Court,

HELD: Under Hindu Succession Act the heirs of the deceased tenant are entitled to succeed, not only to his/her business but also to his/her tenancy rights under the Rent Act which protects the

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heirs from ejection except in accordance with that Act. Therefore, despite the termination of the tenancy, the tenancy rights are heritable and the heirs of the tenant are entitled to enjoy the protection of the Act. [18A-B]

Admittedly Smt. Anandi Bai was inducted into possession of the demised property under a contract of tenancy which was determined by issuance of a notice under Section 106 of Transfer of Property Act. Even thereafter she continued to remain in possession as statutory tenant under the Act. The finding of the Trial Court as affirmed by the First Appellate Court is that the respondent landlord after termination of tenancy received the rent from her and thereby she became tenant holding over till the date of her death. [18F-G]

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 the demised premises held by Smt. Anandi Bai. 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. [19B-C]

J.C. Chatterjee v. Sri Kishan, [1973] 1 SCR 850; Damadilal & Ors. v. Parashram & Ors., [1976] Suppl. SCR 645; Anand Niwas (Pvt.) Ltd. v. Anandji Kalyanji Pedhi & Ors., [1964] 4 SCR 892; Smt. Gian Devi Anand v. Jeevan Kumar & Ors., [1985] Suppl. SCR 1; V. Dhanpal Chatterji v. Yesodai Ammal, [1980] 1 SCR 334 and Bhavarlal Labhchand v. Kanaivalal Nathalal Intawala, [1986] 1 SCC 571, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5052 of 1985.

From the Judgment and Order dated 5.7.1989 of the Rajasthan High Court in Regular Civil Second Appeal No. 240 of 1978.

B.D. Sharma for the Appellants.

D. Bhandari for the Respondent.

The Judgment of the Court was delivered by

K. RAMASWAMY, J. 1. The appellants had leave under

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Article 136 to appeal against the judgment and decree of the High Court of Rajasthan at Jaipur Bench in Second Appeal No. 240 of 1978 dated July 5, 1985 reversing the decrees of the Courts below and decreeing the suit for ejection of the appellants from the demised shop in Jaipur. The facts lie in a short compass: that Smt. Anandi, wife of the first appellant and the mother of the second appellant, Nand Kishore had lease of the demised premises for 11 months from May 1, 1964 on payment of monthly rent of Rs. 18 which expired on March 31, 1965. The respondent landlord terminated the lease by a notice under section 106 of Transfer of Property Act but she remained in possession and enjoyment of the shop carrying on small kirana business. She died in September, 1966. The demised premises are governed by the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (Act 26 of 1950 for short the 'Act'). Section 13(1) thereof, postulates that "notwithstanding anything contained in any law or a contract, no court shall pass any decree or make any order in favour of the landlord, whether in execution of a decree or otherwise evicting the tenant so long as he is ready and willing to pay rent thereof to the full extent allowable by the Act" unless the landlord proves to the

satisfaction of the court any one of the grounds enumerated in Clauses 'a' to 'k' thereof. The action for ejection was initiated by the respondent on the premise that on the death of the tenant, the appellants have no right to continue in occupation of the demised premises. The findings recorded by all the courts are that Smt. Anandi was the tenant. The appellants during her life time, had not carried on the business with her till date of her death. The Trial Court dismissed the suit on the ground that Smt. Anandi paid and the respondent accepted the rent after determination of the lease. So she was a tenant holding over. During the pendency of the appeal, the Act was amended through Rajasthan Premises (Control of Rent and Eviction) Ordinance 26 of 1975 which was replaced by Act 14 of 1976 (for short the 'Amendment Act'). Therein the definition of 'Tenant' was amended by Section 3(ii) of the Amendment Act introducing to Section 3 Clause (vii), thus:

"(vii) 'tenant' means--

(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, 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 purposes, ordinarily residing and in the case of 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."

Consequently, the appellants amended the written statement adding therein paragraphs Nos. 16 and 17 contending that they have been jointly carrying on the business in the demised premises alongwith Smt. Anandi Bai, therefore, they are entitled to the continuance of the tenancy. The amendment was allowed by the Appellate Court and it called for a finding from the Trial Court in that regard. After giving an opportunity to both the parties to adduce evidence afresh the Court recorded the finding in the negative. On its receipt and consideration thereof the appellate court affirmed the finding but confirmed the decree of the Trial Court on other grounds. The High Court held that..as the appellants had not carried on the business with the tenant during her life time as family business they were not entitled to the benefit of the amended definition of the tenant. Accordingly decreed the suit.

(2) The contention of the learned counsel for the appellants is that the lease hold right is an heritable estate and on death of the tenant in September, 1966, the succession thereto was opened and the appellants, being Class I heirs under the Hindu Succession Act, 1956 inherited by intestate succession the lease hold estate in the tenancy rights held by Smt. Anandi. The said right received express recognition under the Amendment Act which is not in derogation to the personal law. The High Court, thereby, committed manifest error of law. Shri Dalveer Bhandari, learned counsel for the respondent, on thorough preparation of the case, has vehemently resisted the contention. He also circulated written arguments. According to him preceding the Amendment Act the commercial or business tenancy was not heritable as held in J.C. Chatterjee v. Sri Kishan. [1973] 1 SCR 850 by the High Courts of Rajasthan, Punjab and Haryana and Delhi.

For the first time the right to succession has been created under the Amendment Act. The finding recorded by all the courts is that during the life time and till the date of death of the tenant, Smt. Anandi, the appellants did not carry on business with her as family business in the

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demised premises. On determination of tenancy the appellants became trespassers. Thereby the appellants became disentitled to remain in possession of the demised premises. It is seen that Section 13(1) of the Act engrafts non obstante clause, namely, "notwithstanding anything contained in any law or contract no court shall pass any decree of eviction against the tenant so long as the tenant is ready and willing to pay rent therefore to the full extent allowable by the Act" unless one or other ground or grounds specified in Clauses 'a' to 'k' of sub-section (1) of Section 13 are established. Admittedly, the settled legal position preceding the amendment act, prevailing in the State of Rajasthan was that the lease hold rights of the tenanted premises for commercial or business purposes governed by the Act is not heritable. It is a personal right to the tenant. A reading of the amendment to the definition of 'tenant' in Section 3 Sub-Clause (vii)(b) makes the legislative intent manifest that from the date of the Amendment Act came into force, on the death of the tenant, his surviving spouse, son, daughter and other heir, in accordance with personal law as applicable to him, who had been, in the case of the premises leased out for residential purposes, ordinarily residing and, in the case of premises leased out for commercial or business purposes, ordinarily had been carrying on business with him/her in such premises as members of his/her family upto his/ her death. Therefore, under the amended definition of tenant, if one seeks to make avail of the benefit of statutory tenancy under the Act, he must establish to the satisfaction of the court that the surviving spouse, son or daughter and other heir, in case of residential purposes, he/she/they--ordinarily had been residing in the premises along with the tenant and continued to do so till date of death of the tenant. Similarly, in respect of premises leased out for commercial or business purposes it must be established that the surviving spouse or son or daughter and the heir as the case may be ordinarily had been carrying on the business during the life time of the tenant as members of the family in the demised premises and continued to do the business till date of the death of the tenant. In other words to avail of the statutory right under section 3(viii)(b) there must continue to subsist the unity of action and continuity of membership of the family between the deceased tenant and the spouse etc. The break in either of the links snaps off the right denuding the continuity of the statutory tenancy.

(3) Every tenancy is rounded, initially, upon a contract. The contractual tenant has an estate or property in the lease-hold interest of the tenancy and his heritability is an incidence of the tenancy. Despite termination of the tenancy this Court ecologised the resultant consequences in *Damadilal & Ors. v. Parashram & Ors.*, [1976] Suppl.

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SCR 645 in which three Judges Bench held that:

"It cannot be assumed, however, that with the determination of the tenancy the estate must necessarily disappear and the statute can only preserve his status of irremovability and not the estate he had in the premises in his occupation."

The facts in that case were that the tenancy of business premises was governed by the Madhya Pradesh Accommodation

Control Act, 1961. The contracted tenancy was determined and a suit for eviction from a shop was laid in the Civil Court against the tenant. During its pendency he died and his legal representatives were sought to come on record which was resisted. The word 'tenant' had been defined under section 2(1) of that Act, thus:

"a person by whom or on whose account or behalf the rent of any accommodation is, or, but for a contract express or implied would be payable for any accommodation and includes any person occupying the accommodation as a subtenant and also any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act; but shall not include any person against whom any order or decree for eviction has been made"

he definition is the same as in the present case on hand under Clause (a) of Sec. 3(vii) of the Rajasthan Act. It was contended that the tenancy came to a terminus with its determination by issuance of notice under section 106 of Transfer of Property Act and the legal representatives do not succeed to the estate of the deceased tenant so as to prosecute the proceedings. While repelling that contention, noticing the definition referred to above, Gupta, J. speaking for the court held that:

"The definition makes a person continuing in possession after the determination of his tenancy a tenant unless a decree or order for eviction has been made against him, thus putting him on par with a person whose contractual tenancy still subsists. The incidents of such tenancy and a contractual-tenancy must, therefore, be the same unless any provision of the Act conveyed a contrary intention. That under this Act such a tenant retains an interest in the

premises, and not merely a personal right of occupation, will also appear from section 14 which contains provisions restricting the tenant's power of subletting There is nothing to suggest that this section does not apply to all tenants as defined in Section 2(i). A contractual tenant has an estate or interest in premises from which he carves out what he gives to the sub-tenant. Section 14 read with section 2(i) makes it clear that the so-called statutory tenant has the right to sub-let in common with a contractual tenant and this is because he also has an interest in the premises occupied by him."

Accordingly it was held that they succeeded as legal representatives to the lease-hold interest of the commercial premises.

(4) How to resolve the controversy between the ratio therein and that of majority contra view taken in Anand Niwas (Pvt.) Ltd. v. Anandji Kalvanji Pedhi & Ors., [1964] 4 SCR 892 and Jagdish Chander Chatterjee & Ors. v. Sri Kishan & Anr., (supra), the later case on which heavy reliance was placed by Mr. Dalveer Bhandari that arose directly under the Rajasthan Rent Control Act, referred to the Constitution Bench in Smt. Gian Devi Anand v. Jeevan Kurnar & Ors., [1985] Suppl. SCR 1. The facts therein were that the definition of tenant under the unamended Delhi Rent Control Act, similar to Section 3(vii)(a) of the Act was in vogue in the Delhi Rent Control Act, 1958. The premises in question therein was commercial premises. The definition of tenant was amended with retrospective effect. The contention raised was that the amended Act accords heritability to residential tenancy while omitting the benefit to commercial or business tenancy. The legal representatives of the deceased tenant, did not acquire heritable interest in the commercial tenancy under that Act. A.N. Sen, J. speaking for the Constitution

Bench surveyed the case law in extenso and upheld the view in Darnadilal's case. It was held at p. 24 to 25 thus:

"For an appreciation of the question it is necessary to understand the kind of protection that is sought to be afforded to a tenant under the Rent Acts and his status after the termination of the contractual tenancy under the Rent Acts. It is not in dispute that so long as the contractual tenancy remains subsisting, the contractual tenancy creates heritable rights; and, on the death of a

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contractual tenant, the Heirs and legal representatives step into the position of the contractual tenant, and in the same way on the death of a landlord the heirs and legal representatives of a landlord become entitled to all the rights and privileges of the contractual tenancy and also come under all the obligations under the contractual tenancy. The Rent Acts seek to preserve social harmony and promote social justice by safeguarding the interests of the tenants mainly and at the same time protecting the legitimate interests of the landlords. Though the purpose of the various Rent Acts appear to be the same, namely, to promote social justice by affording protection to tenants against undue harassment and exploitation by landlords, providing at the same time for adequate safeguards of the legitimate interests of the landlords, the Rent Acts undoubtedly lean more in favour of the tenants, for whose benefit the Rent Acts are essentially passed. It may also be noted that various amendments have been introduced to the various Rent Acts from time to time as and when situation so required for the purpose of mitigating the hardship of tenants Though provisions of all the Rent Control Legislation is- that a contractual tenant on the termination of the contractual tenancy is by virtue of the provisions of the Rent Acts not liable to be evicted as a matter of course under the ordinary law of the land and he is entitled to remain in possession even after determination of the contractual tenancy and no order or decree for eviction will be passed against a tenant unless any ground which entitles the landlord to get an order or decree for possession specified in the Act is established. In other words, the common feature of every Rent Control Act is that it affords protection to every tenant against eviction despite termination of tenancy except on grounds recognised by the Act and no order or decree for eviction shall be passed against the tenant unless any such ground is established to the satisfaction of the Court "

(5) The seven Judges Bench of this Court reported in V. Dhanpal Chettiar v. Yesodai Ammal. [1980] 1 SCR 334 while considering the effect of termination of the tenancy under Section 106 of Transfer of Property Act vis-a-vis right of the tenant under T.N. Buildings (Lease & Rent) Control Act, 1960 held that 'various State Rent Control Acts make serious encroachment in the field of freedom of

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contract. It does not permit the landlord to snap his relationship with the tenant merely by his act of serving a notice to quit on him. In spite of the notice, the law says that he continues to be a tenant and he does so enjoying all the rights of a lessee and at the same time is deemed to be under all the liabilities such as payment of rent etc., in accordance with law. Similarly while considering the language of Section 10(1) of the A.P. Building (Lease, Rent and Eviction Control) Act, 1960 similar to Section 13(1) of the Act, whether the statutory lease is to be terminated by issuance of notice under Section 106 of the Transfer of Property Act, it was further held at p. 352 B that "even a

special provision is provided by way of abundant precaution only that without this a tenant continuing in possession after the termination of the contractual tenancy and until an eviction order is passed against him, continues on the same terms and conditions as before and he cannot be evicted unless a ground is made out for his eviction according to the State Rent Act". In Gian Devi Anand's case the Constitution Bench further held at p. 32 F that:

"The termination of the contractual tenancy in view of the definition of tenant in the Act does not bring about any change in the status and legal position of the tenant, unless there are contrary provisions in the Act; and the tenant notwithstanding the termination of tenancy does enjoy an estate or interest in the tenanted premises. This interest or estate which the tenant under the Act, despite termination of the contractual tenancy, continues to enjoy creates a heritable interest in the absence of any provision to the contrary

at p. 33E to G it was held that:

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."

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at p. 35D to G, it was observed that:

So long as the contractual tenancy of a tenant who carries on the business continues, there can be no question of the heirs of the deceased tenant not only inheriting the tenancy but also inheriting the business and they are entitled to run and enjoy the same. We have earlier held that mere termination of the contractual tenancy does not bring about any change in the status of the tenant and the tenant by virtue of the definition of the 'Tenant' in the Act and the other Rent Acts continue to enjoy the same status and position unless there be any provisions in the Rent Acts which indicate to the contrary. 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

at p. 36 B to 37 A it was concluded that:

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. 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

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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."

(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.

The unamended definition of tenant under section 3(vii) of the Act reads thus:

"tenant" means the person by whom the rent is, or but for a contract express or implied would be, payable for any premises and includes any person holding or occupying the premises as a sub-tenant, or any person continuing in possession after the termination of a tenancy in his favour otherwise than under the provisions of the Act."

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This definition is mutatis mutandis same as the one defined under Madhya Pradesh Act and also the Delhi Rent Act. Equally it would be the same under the amended clause 'a' of section 3(vii) with slight elongation. Under Hindu Succession Act the heirs of the deceased tenant are entitled to succeed, not only to his business, but also to his tenancy rights under the Rent Act which protects the heirs from ejectment except in accordance with that Act. Therefore, despite the termination of the tenancy, the tenancy rights are heritable and the heirs of the tenant are entitled to enjoy the protection of the Act.

(7) The ratio in Bhavarlal Labhchand Shah v. Kanaiyalal

Nathalal Intawala, [1986] 1 SCC 571 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 the Rent Act on the stranger who was not a member of the family. The march of law culminated in Gian Devi Anand's case knocked of the bottom of A.C. Chatterjee's ratio. Similarly the foundation in Sita Ram v. Govind, [1969] Weekly Law Notes p. 108; Balkesh and another v. Shanti Devi and others, reported in 1972 Rent Control Tribunal p. 285 and Mohan Lal v. Jaipur Hosier Mills Pvt. Ltd. reported in 1974 Rent Control Journal p. 240 has been shaken and no longer remain to be good law.

(8) Admittedly Smt. Anandi was inducted into possession of the demised property under a contract of tenancy which was determined by issuance of notice under Section 106 of Transfer of Property Act. Even thereafter she continued to remain in possession as statutory tenant under the Act. The finding of Trial Court as affirmed by the first appellate court is that the respondent landlord after termination of tenancy received the rent from her and thereby she became tenant holding over till date of her death.

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.

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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. The succession having been opened to the appellants and succeeded in September, 1966 to the estate of the tenant without any hiatus and restriction on the heritable interest in the lease-hold right held by the tenant Smt. Anandi, the Amendment Act being admittedly prospective in operation, does not apply to the facts of the case and does not have the effect of divesting their vested rights in the lease-hold held by the tenant. They are entitled to enjoy the tenancy rights without any restrictions or hedge put by the Amendment Act. We, thereby, hold that the Amending Act does not apply to the facts of this case. But the appellants succeeded to the heritable interest in the lease-hold right in the demised premises governed by the Act subject to the rights and limitations prescribed under the Act and also subject to the rights in favour of the respondent created under section 13(1) (a) to (k) and other provisions of the Act.

(9) Accordingly, we have no hesitation to hold that the appellants are entitled to remain in possession of the demised shop in question till the appellants are duly evicted in accordance with the provisions of the Act as amended from time to time. The appeal is accordingly allowed and the decree and judgment of the High Court is reversed and that of the Trial Court is restored. The suit, accordingly, stands dismissed but in the circumstances, each party is directed to bear their own costs throughout-

R.N.J.
missed.

Appeal dis-

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