

CASE NO.:
Appeal (civil) 197-198 of 2002

PETITIONER:
GANESH TRIVEDI

RESPONDENT:
SUNDAR DEVI AND ORS.

DATE OF JUDGMENT: 11/01/2002

BENCH:
R.C. LAHOTI & BRIJESH KUMAR

JUDGMENT:
JUDGMENT

2002 (1) SCR 189

The following Order of the Court was delivered : Leave granted.

The controversy in this case centres around Section 12(1)(b) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, hereinafter 'the Act', for short.

Ganesh Trivedi, the appellant has purchased the suit premises situated in Deo Nagar, Kanpur city in the State of U.P. under registered deed of sale dated 18.12.1996 from Jagdamba Prasad Awasthi who was till then the owner-landlord of the suit premises. The premises which are residential in nature were let out by Jagdamba Prasad to one Suraj Prasad for the purpose of residence. Deo Narain and Suraj Prasad were real brothers. Suraj Prasad died some time in the year 1985. During his lifetime Deo Narain had come to stay with him and till his death was living in the suit premises along with his brother. Suraj Prasad died issueless survived by Deo Narain as the only here of the former. He remained in occupation of the suit premises after the death of his brother. During the pendency of the proceedings before the High Court Deo Narain expired and respondent nos. 1 to 3 being respectively his widow, son and daughter have been brought on record by substitution in place of Deo Narain. These are undisputed facts.

In April 1998, Vikas Shukla, the respondent no. 4 filed an application before the Rent Controller and Eviction Officer, Kanpur for allotment of the suit premises declaring them to be 'deemed vacant' on the ground that the tenant of the premises had expired. The Rent Control Inspector inspected the premises and submitted a report that the tenant who was living in the suit premises for last forty years, had expired and presently the premises were in possession of his brother. Deo Narain filed his objections in the proceedings. However, vide order dated 31.10.1998 the Rent Controller and Eviction Officer ('RCEO', for short) declared the suit premises to be vacant. Deo Narain filed a writ petition in the High Court of Allahabad putting in issue the order of RCEO. On 2.8.2000 the High Court has allowed the writ petition and set aside the order of RCEO. Though a review of the order of the High Court was sought for by the landlord but the same was rejected.

The purchaser-landlord has filed these appeals by special leave. Shri Ashok Shrivastava, the learned senior counsel for the appellant has submitted that under the Act a brother is not a member of the family of the tenant and therefore on the death of the tenant the premises will be deemed to be vacant. Such deemed vacancy had occurred during the lifetime of late Suraj Prasad itself inasmuch as he had allowed his brother to enter into occupation of the suit premises and therefore the factum of late Suraj Prasad being survived by his brother Deo Narain alone at the time of the former's death would not make any difference. He submitted that the High Court ought not to have set aside the order of RCEO. Shri R.D. Upadhyay,

the learned counsel for the respondents in occupation of the premises has supported the impugned order of the High Court.

Sub-section (1) of Section 12 reads as under :

12. Deemed vacancy of building in certain cases.-(1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if-

- (a) he has substantially removed his effects therefrom, or
- (b) he has allowed it to be occupied by any person who is not a member of his family, or
- (c) in the case of a residential building, he as well as members of his family have taken up residence, not being temporary residence, elsewhere.

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'Tenant' and 'family' have been defined in Section 3 of the Act as under:

(a) "tenant", in relation to a building, means a person by whom its rent is payable, and on the tenant's death-

(1) In the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death;

(2) In the case of a non-residential building, his heirs;

Explanation.-An occupant of a room in a hotel or a lodging house shall not be deemed to be a tenant.

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(g) "family", in relation to a landlord or tenant of a building, means, his or her-

(i) spouse,

(ii) male lineal descendants,

(iii) such parents, grandparents and any unmarried or widowed or divorced or judicially separated daughter or daughter of a lineal descendant, as may have been normally residing with him or her, and includes, in relation to a landlord, any female having a legal right of residence in that building;

It is not disputed at the Bar that tenancy is a heritable right and the only limitation imposed, by the definition of 'tenant' given in the Act as aforesaid is that in the case of residential building such of the heirs of the tenant as did not normally reside with him in the building at the time of his death would be excluded from inheriting the tenancy rights.

The brother of a tenant is not included in the definition of 'family'. However, the present one is not a case where the tenant Suraj Prasad had during his lifetime taken up residence elsewhere and/or allowed the suit premises to be occupied by his brother. Deo Narain, being the real brother of late Suraj Prasad, the tenant, had come to stay with his brother and was residing along with him as such, even at the time of death of Suraj Prasad. It will not therefore be correct to say that applicability of clause (b) of sub-section (1) of Section 12 of the Act was attracted to the suit premises during the lifetime of Suraj Prasad and a deemed vacancy had occurred. On the death of Suraj Prasad tenancy rights devolved on Deo Narain, he being the only heir. He too became 'tenant' within the meaning of clause (a) of Section 3. The decision of the High Court cannot, therefore, be faulted.

There is yet another reason why no interference with the impugned order of the High Court is called for. Shri Upadhyay, the learned counsel for respondent nos. 1 to 3 invited our attention to the pleadings and pointed out that admittedly the sale deed executed by Jagdamba Prasad Awasthi in favour of Ganesh Trivedi, the appellant, contains recitals to the effect that the former landlord-owner was well aware of Deo Narain occupying the suit premises after the death of Suraj Prasad, that he was acknowledged by the landlord as tenant in the premises, and that rent was also paid by Deo Narain to the landlord under receipts issued by landlord though Deo Narain had fallen into some arrears of rent at the time of sale of the suit premises in favour of the appellant. Such admissions made by Jagadamba Prasad Awasthi are binding on Ganesh Trivedi, the appellant, inasmuch as the same are contained in the deed by which title has been derived by the appellant and thereunder the appellant has stepped into shoes of the previous owner-landlord. Deo Narain's status as tenant in occupation of the suit premises, cannot, therefore, be doubted or disputed by the appellant.

The proceedings out of which these appeals arise were not initiated by the landlord; they were initiated by a third person who was interested in the allotment of the suit premises in the event of their being declared 'deemed vacant' and after an adverse decision by the High Court he has chosen not to pursue his claim. He has not filed any petition seeking leave to appeal against the decision of the High Court.

For the foregoing reasons, the appeals are held liable to be dismissed and are dismissed accordingly. No order as to the costs.