

A

P.V. PAPANNA AND ORS.

v.

K. PADMANABHAIAH

FEBRUARY 4, 1994

B

[S. MOHAN AND M.K. MUKHERJEE, JJ.]

C

Karnataka Rent Control Act, 1961: Section 21(1)—Landlord—Eviction decree against tenant on the ground of bona fide personal requirement—Death of landlord—Eviction decree—Whether becomes inexecutable—Events subsequent to the filing of petition—When can be taken into account—Subsequent events whether could be taken note of during execution stage.

D

The appellants' predecessor-in-interest, landlord, obtained a decree of possession against the respondent-tenant on the ground that the suit premises were *bona fide* required for his personal requirement to start a business. The respondent-tenant preferred a revision before the High Court which dismissed the same but granted him 4 years time to vacate the premises. The special leave petition filed by the tenant challenging the order of the High Court was dismissed. However, before the expiry of 4 years granted by the High Court the landlord died leaving a will bequeathing the suit premises to his brother, wife and his son, i.e., the appellants.

E

On failure of the respondent-tenant to vacate the premises within 4 years the appellants filed an execution application which was resisted by the tenant contending that (1) the order of eviction having been made solely on the ground of *bona fide* use and occupation of premises by the deceased landlord to carry on a business, it became inexecutable on his death; (ii) the order of eviction being personal it could not be inherited by or assigned in favour of the legal representatives.

F

The Executing Court passed an order directing issuance of a delivery warrant holding that (i) once the decree for eviction had become final it could not be agitated that the decree had become infructuous as the personal requirement of landlord for his own use and occupation had come to an end with his death; (ii) on the death of the landlord the rights created by the decree stood transferred in favour of the legal representatives and the same could not be defeated on the ground that the decree holder had died. On revision, the High Court set aside the order of the Executing

G

H

Court and dismissed the eviction petition on the grounds that (i) the cause of action did not survive on the death of the landlord and that (ii) the legatees, claiming as legal representatives of the deceased landlord, could not execute the decree for eviction which was purely personal. Against the decision of the High Court appeal was preferred in this Court.

Allowing the appeal and setting aside the judgment of the High Court, this Court

HELD: 1. In a suit for eviction on the ground of *bona fide* requirement of premises by landlord the subsequent events ought to be taken into account for the purpose of finding out whether the landlord still required the premises in possession of the tenant. However, such an enquiry can be made so long as the decree for eviction does not become final. In other words, once the matter has become final in the sense that the order of eviction has been upheld by the highest Court in which it was sought to be challenged, it would not be open to further challenge, which necessarily can be in the execution stage. This conclusion inevitably follows from the well settled principle that a Court executing the decree cannot go behind the decree for it is binding and conclusive between the parties to the suit. Therefore, the Executing Court is required to execute the decree as it finds; save in exceptional cases where the decree on the face of it may be found to be without jurisdiction. [647-H, 648-A-B]

2. Events which take place subsequent to the filing of an eviction petition under any Rent Act can be taken into consideration for the purpose of adjudication until a decree is made by the final Court determining the rights of the parties but any event that takes place after the decree becomes final cannot be made a ground for reopening the decree. The finality to the dispute culminating in the decree cannot be reopened by the executing Court for re-adjudication on the ground that some event or the other has altered the situation. [649-E]

2.1. Once the decree became final it became a part of the estate of the landlord and therefore the appellants as legal representatives of the deceased landlord are entitled to execute the same. [649-F]

Hasmat Rai v. Raghunath Prasad, A.I.R. (1981) S.C. 1711; *P. Venkateswarlu v. The Motor & General Traders*, A.I.R. (1975) S.C. 1409; *Syed Asadullah Kazmi v. Addl. Distt. Judge Allahabad*, A.I.R. (1981) S.C. 1724

A and *M/s. Variety Emporium v. R.M. Mohd. Ibrahim*, A.I.R. (1985) S.C. 207, relied on.

D.K. Soni v. P.K. Mukherjee, [1988] 1 S.C.C. 29 and *Yasimsah Fakruddinsab Dori v. Basappa A/F Basappa Hanaraki (Dead) by L.rs.*, [1991] 2 K.L.J. 219, distinguished.

B

Dr. Mohd. Ibrahim v. Rahim Khan, (1947) II M.L.J. 419, disapproved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 622 of 1994.

C

From the Judgment and Order dated 31.10.1991 of the Karnataka High Court in C.R.P. No. 4138 of 1990.

S.S. Javali, M. Shivappa and P.R. Ramasesh for the Appellants.

D

C. Seetharamaiah, M.R. Janardhana and P. Mahale for the Respondent.

The Judgment of the Court was delivered by

M.K. MUKHERJEE, J. Special leave granted.

E

1. This appeal stems from the judgment and order dated October 31, 1991 passed by the High Court of Karnataka in Civil Revision Petition No. 4138 of 1990. Facts and circumstances leading to this appeal are as under:

F

On March 22, 1973 one P.V. Jayashankar filed an application in the first Court of the Munsiff at Bangalore under Section 21(1) of the Karnataka Rent Control Act, 1961 seeking recovery of possession of his non-residential premises from his tenant, the respondent herein. Though recovery of possession was sought for on various grounds the trial Court, by its judgment and order dated October 24, 1980, allowed the application solely on the ground that the suit premises were *bona fide* required by the

G

landlord for his personal use and occupation and directed the tenant to hand over vacant possession of the same to Shri Jayashankar. The trial Court granted two years' time to the tenant to comply with its direction. Against the order of eviction the tenant preferred a revision petition in the High Court of Karnataka which was dismissed on December 19, 1993. The

H

High Court, however, granted four years' time to the tenant to vacate the

premises. Assailing the order of dismissal of his revision petition, the tenant filed a Special Leave petition in this Court which was also dismissed. A

2. Before the period of four years granted by the High Court to the tenant to vacate the premises expired, Jayashankar died - on October 26, 1986, to be precise. He left behind a will dated June 11, 1986 under which the suit premises were bequeathed to his brother, his wife and their son, the three appellants herein. B

3. On the failure of the tenant to vacate the premises within the period of four years, which expired on December 31, 1987, the appellants, as legatees under the will and legal representatives of the deceased Jayashankar, filed an application for execution of the order for eviction in the Court of the Small Causes, Bangalore on March 7, 1988. In resisting the execution, the tenant first contended that the order for eviction having been made solely on the ground of *bona fide* use and occupation of the premises by Jayashankar to carry on a business, it had become ineffective, unenforceable and inexecutable on his death. The tenant next contended that the order of eviction being personal, it could not be inherited by or assigned in favour of the legal representatives. The tenant also assailed the genuineness of the will. C D

4. Overruling the objections raised by the tenant, the Executing Court passed an order on July 20, 1990 directing issuance of a delivery warrant. The Executing Court took the view that, sitting in execution, it could not go behind decree. According to the Court, once the decree for eviction had become final it could not be agitated that the decree had become infructuous as the personal requirement of landlord for his own use and occupation had come to an end with his death. The Court lastly held that on the death of the landlord the rights created by the decree stood transferred in favour of the legal representatives and the same could not be defeated on the ground that the decree holder had died. E F

5. Aggrieved by the order of the Executing Court, the tenant preferred a revision petition before the High Court. By its judgment and order dated October 31, 1991, the High Court allowed the petition, set aside the order of the Executing Court and dismissed the eviction petition on the grounds that the cause of action did not survive on the death of the landlord and that the legatees, claiming as legal representatives of the deceased landlord, could not execute the decree for eviction which was G H

A purely personal.

B 6. In the context of the admitted facts that Jayashankar sought recovery of possession of the suit premises for his personal requirement to start a business of his own and that he died after the Special Leave petition filed by the tenant in this Court against the order of eviction was dismissed, the only question which requires an answer in this appeal is whether the order thereby became inexecutable.

C 7. This Court has consistently held that when eviction of a tenant is sought for on the ground of personal need of the landlord, such need must not only exist on the date of the suit but must also exist when higher courts deal with the order of eviction in appeal or in revision. Reference in this connection may first be made to *Hasmat Rai v. Reghunath Prasad*, A.I.R. (1981) S.C. 1711, where relying upon its earlier decision in the case of *P. Venkateswarlu v. The Motor & General Traders*, A.I.R. (1975) S.C. 1409, this Court held that it was incontrovertible that where possession was sought for personal requirement it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but must subsist till the final decree or an order for eviction was made. This Court emphasised that if during the progress and passage of the proceeding from Court to Court subsequent events had occurred which, if noticed, would non-suit the landlord, the Court had to examine and evaluate the same and mould the decree accordingly. This Court observed that the tenant was entitled to demonstrate that the need or requirement of the landlord no more existed by pointing out such subsequent events to the Court, including the appellate Court. In such a situation, it would be incorrect to say that as the decree or order for eviction was passed against the tenant he could not invite the Court to take into consideration subsequent events. The Court lastly observed:

G "He (the tenant) can be precluded from so contending when the decree or order for eviction has become final".

(emphasis supplied)

H 8. In concurring with the above observations made by Justice D.A. Desai for himself and Justice E.S. Venkataramiah (as His Lordship then was), Justice R.S. Pathak (as His Lordship then was) said:

".....it is well settled now that in a proceeding for the ejection of a tenant on the ground of personal requirement under a statute controlling the eviction of tenants, unless the statute prescribes to the contrary, the *requirement must continue to exist on the date when the proceeding is disposed of either in appeal or revision, by the relevant authority*".

(emphasis supplied)

9. In *Syed Asadullah Kazmi v. Addl. Distt. Judge, Allahabad*, A.I.R. (1981) S.C. 1724, it was held by this Court that the order of the appellate authority releasing a portion of the premises in favour of the third respondent therein and leaving the remaining portion in the tenancy of the appellant acquired finality when the proceedings taken against it by the appellant had failed. The Court observed that as the order which had been taken to the Highest Court had become final the Prescribed Authority was bound to give effect to the same and in so doing it was not acting outside his jurisdiction or contrary to law. This Court then observed:—

"It is true that subsequent events must be taken into account by a statutory authority or Court when considering proceedings arising out of a landlord's petition for ejection of a tenant on the ground of the landlord's personal need. *But in the present case, the order for release of a portion of the accommodation acquired finality before the death of Raj Kumar Sinha and the controversy concluded by it could not be reopened*".

(emphasis supplied)

The observations made in *Hasmat Rai* (supra) were quoted with approval in *M/s Variety Emporium v. R.M. Mohd. Ibrahim*, A.I.R. (1985) S.C. 207.

10. From the various observations made in the cases referred to above it is patently clear that this Court, while laying down that in a suit for eviction on the ground of *bona fide* requirement of premises by landlord the subsequent events ought to be taken into account for the purpose of finding out whether the landlord still required the premises in possession

- A of the tenant, has also laid down that such an enquiry can be made so long as the decree for eviction does not become final. In other words, once the matter has become final in the sense that the order of eviction has been upheld by the Highest Court in which it was sought to be challenged, it would not be open to further challenge, which necessarily can be in the execution stage. This conclusion inevitably follows from the well settled principle that a Court executing the decree cannot go behind the decree for it is binding and conclusive between the parties to the suit. Therefore, the Executing Court is required to execute the decree as it finds: save in exceptional cases where the decree on the face of it may be found to be without jurisdiction. To put it differently, the Executing Court cannot enquire as to why the decree was passed but for the purpose of finding out whether the decree is a valid one or a nullity it can go into the question as to whether the Court which passed the decree was competent to do so. Besides, the Executing Court may if need be, look into the pleadings of the parties and the proceedings of the trial, for the limited purpose of construing the decree or the meaning of the words used therein.
- D

11. The learned counsel for the tenant, however, strongly relied upon the following observation in *D.K. Soni v. P.K. Mukherjee*, [1988] 1 S.C.C.29.

- E ".....We recognise that unless the statute expressly prohibits as it did in the instant case, by the aforesaid clause, cautious recognition of subsequent events to mould the relief should be taken note of".

- F to contend that subsequent events could be taken note of even at the execution stage as there was no statutory inhibition to such recognition. Read in isolation, the above quoted observation may seem to support the above contention of the tenant but when the judgment is read as a whole it completely negatives the contention.

- G 12. In *D.K. Soni* (supra) the Court reiterated the ratio of *Hasmat Rai* (supra) and *Syed Asadullah Kazmi* (supra) as quoted earlier and held that finality of judicial decision was one of the essential ingredients upon which administration of justice must rest. Therefore, the above quoted observation has to be read in the context of the facts and circumstances of that case and understood in the light of the provisions of the U.P. Rent Act
- H which came up for consideration there.

13. The learned counsel for the tenant then relied upon a Division Bench Judgment of the Karnataka High Court in *Yasimasah Fakruddinsab Dori v. Basappa A/F Basappa Hangaraki (Dead)* by *L.rs.*, [1991] 2 K.L.J. 219 wherein it has been held that as the landlord sought recovery of possession of the suit premises for running a business of his own and he subsequently died, the cause of action perished with his death. The facts of that case are clearly distinguishable as, unlike ours, there the landlord died during the pendency of the revision petition filed by the tenant against the trial court's order for eviction.

14. The learned counsel lastly relied upon a judgment of the Madras High Court in *Dr. Mohd. Ibrahim v. Rahim Khan*, (1947) II M.L.J. 419. Undoubtedly that case supports him as it upheld the contention of a tenant that on the death of the landlady the order for recovery of possession had become unenforceable, but then we regret our inability to rely upon the same; firstly, because in the judgment there is no rationale for accepting the above contention and secondly, because of the judgments of this Court referred to earlier.

15. For the foregoing discussion, we must hold that events which take place subsequent to the filing of an eviction petition under any Rent Act can be taken into consideration for the purpose of adjudication until a decree is made by the final Court determining the rights of the parties but any event that takes place after the decree becomes final cannot be made a ground for reopening the decree. The finality to the dispute culminating in the decree cannot be reopened by the executing Court for readjudication on the ground that some event or the other has altered the situation. As a corollary thereto it must also be held that once the decree became final it became a part of the estate of the landord and therefore the appellants as legal representatives of the deceased landlord are entitled to execute the same.

16. We, therefore, allow this appeal, set aside the judgment of the High Court and restore that of the Executing Court. However, there will be no order as to costs.

T.N.A.

Appeal allowed.