

PETITIONER:
MST. SURAYYA BEGUM, ETC.

Vs.

RESPONDENT:
MOHD. USMAN AND ORS., ETC.

DATE OF JUDGMENT 26/04/1991

BENCH:
SHARMA, L.M. (J)
BENCH:
SHARMA, L.M. (J)
VERMA, JAGDISH SARAN (J)

CITATION:
1991 SCR (2) 517 1991 SCC (3) 114
JT 1991 (2) 435 1991 SCALE (1) 810

ACT:
Delhi Rent Control Act, 1958/ Code of Civil Procedure, 1908: Section 25 Section 11, Explanation VI and 47, and Order 1, Rule 8-Decree for eviction -Execution of - All legal heirs of original tenants not impleaded in eviction proceedings-Whether Person not impleaded entitled to contest execution petition-Principle of representation-Applicability of-Succession to the tenancy of the deceased Section 19 of the Hindu Succession Act, 1956-Scope of.

HEADNOTE:

The respondents-landlords in the two appeals obtained decrees of eviction against the legal representatives of the original tenants of the premises in dispute. In execution, the appellants objected, contending that since they were not impleaded as parties in the eviction proceedings, their right to tenancy, which was an independent one, could not be put to an end by permitting the decrees to be executed, and that the decrees obtained against other members of the family would not bind them.

While the courts below rejected the objection in one case, in the other case the executing court held that in view of the controversy on questions of fact involved, the appellants objection could be finally decided only after the parties were allowed to lead evidence, and hence fixed a date for trial of the dispute. However, on appeal by the landlord, the High Court held that the appellant was bound by the decree and her objection was filed with the sole object of delaying the execution. Hence, the appellant filed the appeal, by special leave, contending that since she was left out of the proceeding, the decree was not only not binding on her, but it could not be kept alive even against the others.

On behalf of the decree-holders it was contended that when the tenancy rights devolved the heirs of a tenant on his death, the incidence of tenancy remained the same as earlier enjoyed by the original tenant and it has a single tenancy which devolved on them. There was no division of the premises or of the rent payable, and the position as between the landlord and tenant continued unaltered, and the heirs succeeded to the tenancy as joint tenants.

Civil Appeal No. 2057 of 1991, this Court,

HELD: 1.1 The principle of representation of the interest of a person, not impleaded by name in a judicial proceeding, through a named party is not unknown. A Karta of Joint Hindu Family has always been recognised as a representative of the other members of the Joint Hindu Family, and so has been a trustee. In cases where the provisions of order 1, Rule 8 of the Civil Procedure Code 1908 are attracted, a named party in a suit represents the other persons interested in the litigation, and likewise a receiver appointed in one case represents the interests of the litigating parties in another case against a stranger. Similarly, the real owner is entitled to the benefits under a decree obtained by his benamidar against a stranger and at the same time, is also bound by the decision. Examples can be multiplied. [522B-C]

1.2 Under Explanation VI to Section 11 of the Code of Civil Procedure, 1908 where persons litigate bonafide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating, subject of course, to the essential condition that the interest of a person concerned has really been represented by the others in other words, his interest has been looked after in a bona fide manner. If there be any clash of interests between the person concerned and his assumed representative, or if the latter, due to collusion or for any other reason, mala fide neglects to defend the case, he cannot be considered to be a representative. The issue, when it becomes relevant has, therefore, to be answered with reference to the facts and circumstances of the individual case. [522D-F]

1.3 So far as Section 19 of the Hindu Succession Act, 1956, is concerned, when it directs that the heirs of a Hindu dying intestate shall take his property as tenants-in-common, it is dealing with the rights of the heirs inter se amongst them, and not with their relationship with a stranger having a superior or distinctly separate right therein. The relationship between the stranger and the heirs of a deceased tenant is not the subject matter of the section. Similar is the situation when the tenant is Mohammedan. [524E-F]

1.4 In the instant case, in the first appeal, since disputed questions of fact are involved, including the parentage of the appellant and her allegations of collusion between the landlord and the other legal heirs, the High Court, should not have closed the matter finally without

519

waiting for the evidence, as directed by the executing Court. The judgement of the High Court is, therefore, set aside and the matter remitted to the executing court for a fresh decision after permitting the parties to lead evidence. [522H, 523A-B]

1.5 In the other appeal, although adequate liberty was given by the Additional Rent Controller and the Tribunal to lead evidence in support of their cases, appellant never availed of the same and went on delaying the proceedings by repeated prayers of adjournment. There were also other circumstances adverse to the case of the appellants, including the facts that the rent was paid to the landlord by their mother and brothers and never by them, and they are young girls in the family who are being looked after by the elders. In the circumstances, they must be held to be effectively represented by the named judgement debtors. [523C-D]

Textile Association (India) Bombay Unit v. Balmohan Gopal Kurup and Another, [1990] 4SCC 700 and Kanji Manji v. The Trustees of the Port of Bombay, [1962]Supp. 3 SCR 461, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2056-2057 of 1991.

From the judgment and Order dated 23.7.1990 & 15.11.90 of Delhi High Court in C.M.(M.) Nos 288/89 and 357 of 1990.

Rajinder Suchher, Rajinder Mathur and Narain for the Appellant.

Avadh Behari and B. Dutta, Raju Ramchandran and Mrs. Kiriti Misra for the Respondents.

The judgment of the Court was delivered by

SHARMA, J. 1. Special leave is allowed in both the cases. Since they involve decision of some common questions of law they are being disposed of together by this judgment.

2. The appellant Surayya Begum in the first case claims herself as one of the nine legal representatives of Khalil Raza, the original tenant of the premises in question, and is objecting to the execution of the decree of eviction obtained by the landlord-respondent No. 1 against the respondent Nos. 2 to 9 who are sons, daughters and wife of Khalil Raza. Her case is that she is also a daughter of Khalil Raza, which is

520

denied by the respondent No. 1; and it is contended on her behalf that since she was not impleaded as a party to eviction proceeding started by the respondent, her right in the tenancy which is an independent right, cannot be put to an end by permitting the decree obtained to be executed. She alleges collusion between them and the decree holder.

3. The landlord-decree holder has denied the existence of another daughter of Khalil Raza by the name of Surayya Begum. It is averred that the appellant who is an objector has been set up by the respondent Nos. 2 to 9 to defeat the decree against them which was contested for a decade upto the stage of Supreme Court.

4. The executing court heard the parties and held that in view of the controversy on questions of fact arising in the case the appellant's objection can be finally decided only after the parties are allowed to lead evidence. A date was accordingly fixed for trial of the disputed issue. The respondent No 1 challenged this order before the Delhi High Court. The High Court agreed with the decree holder respondent holding that the appellant was bound by the decree and her objection was filed with the sole object of delaying the execution. Her application under secs. 47 and 151 of C.P.C. and sec.25 of the Delhi Rent Control Act was accordingly dismissed. The appellant has challenged the High Court's decision in the present appeal.

5. It has been contended on behalf of the appellant that she was as much a tenant as her mother, brothers and sisters, and it is not sufficient for the landlord-respondent to have obtained an eviction decree against the others leaving out the appellant, as a result of which the decree is not binding on her. Heavily relying upon the decision in Textile Association (India) Bombay Unit v. Balmohan Gopal Kurup and Another, [1990] 4 SCC 700 it was urged that the decree could not be kept alive even against the others and so the landlord cannot be put in possession of the premises at all.

6. In the civil appeal arising out of Special Leave Petition No. 15021 of 1990 Shri Shiv Kumar Sharma, who was a tenant in possession of the shop under dispute, died in 1982 leaving behind his widow, three sons and four daughters as his heirs and legal representatives. Thereafter the respondent-landlord commenced an eviction proceeding in 1985, out of which the present matter arises, and impleaded only the wife and the sons of the deceased. Two of the four daughters were married and the remaining two daughters, appellants in the present

521

appeal, were staying in the house but not joined as parties. The suit was contested by the mother and the brothers of the appellant but, ultimately a decree for eviction was passed. In execution, the unmarried daughters filed an objection inter alia contending that they have independent title in the tenancy and the decree obtained against the other members of the family would not bind them. Reliance has been placed upon the decision in the aforementioned Textile Association's case read with sec. 19 (b) of the Hindu Succession Act.

7. The learned advocates representing the decree holders in these two appeals have argued that when the tenancy rights devolve on the heirs of a tenant on his death, the incidence of tenancy remains the same as earlier enjoyed by the original tenant and it is a single tenancy which devolves on them. There is no division of the premises or of the rent payable, and the position as between the landlord and the tenant continues unaltered. Relying on *Kanji Manji v. The Trustees of the Port of Bombay*, [1962] Supp. 3 SCR 461 and borrowing from the judgment in *H.C. Pandey's case* (Supra) it was urged that the heirs succeed to the tenancy as joint tenants. The learned counsel for the appellants have replied by pointing out that as the aforesaid two decisions were distinguished by this Court in the latter case of *Textile Association* (Supra), it was not open to the landlords to support the impugned judgements by relying upon the earlier two cases.

8. So far sec. 19 of the Hindu Succession Act is concerned, when it directs that the heirs of a Hindu dying intestate shall take his property as tenants-in-common, it is dealing with the rights of the heirs inter se amongst them, and not with their relationship with a stranger having a superior or distinctly separate right therein. The relationship between the stranger and the heirs of a deceased tenant is not the subject matter of the section. Similar is the situation when the tenant is a Mohammedan. However, it is not necessary for us to elaborate this aspect in the present appeals. The main dispute between the parties, as it appears from their respective stands on the courts below, is whether the heirs of the original tenants who were parties to the proceeding, represented the objector-heirs also. According to the decree holder in *Miss Renu Sharma's case* their interest was adequately represented by their mother and brothers and they are as much bound by the decree as the named judgment debtors. In *Surayya Begum's case* the respondent No.1 has denied the appellant's claim of being one of the daughters of *Khalil Raza*, and has been contending that the full estate of *Khalil Raza* which devolved upon his heirs on his death was completely represented by the respondent Nos. 2 to 9. In other words, even if the

522

appellant is held to be a daughter of *Khalil Raza* the further question as to whether her interest was represented

by the other members of the family will have to be answered.

9. The principle of representation of the interest of a person, not impleaded by name in a judicial proceeding, through a named party is not unknown. A Karta of a Joint Hindu Family has always been recognised as a representative of the other members of the Joint Hindu family, and so has been a trustee. In cases where the provisions of Order 1, Rule 8 of the Civil Procedure Code are attracted a named party in a suit represents the other persons interested in the litigation, and likewise a receiver appointed in one case represent the interest of the litigating parties in another case against a stranger. Similarly the real owner is entitled to the benefits under a decree obtained by his benamidar against a stranger and at the same time is also bound by the decision. Examples can be multiplied. It is for this reason that we find explanation VI in the following words in sec. 11 of the Code of Civil procedure:

"Explanation VI-Where persons litigate bona fide in respect of a public right or a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating."

This of course, is subject to the essential condition that the interest of a person concerned has really been represented by the others; in other words his interest has been looked after in a bona fide manner. If there be any clash of interests between the person concerned and his assumed representative or if the latter due to collusion or for any other reason, mala fide neglects to defend the case, he can not be considered to be a representative. The issue when it becomes relevant has, therefore, to be answered with reference to the facts and circumstances of the individual case. There may be instances in which the position is absolutely clear beyond any reasonable doubt one way or the other and the question can be settled without any difficulty; but in other cases the issue may have to be decided with reference to relevant evidence to be led by the parties. Surayya Bagum's case is of this class while Renu Sharma's appeal belongs to the first category.

10. In surayya begum's case disputed questions of fact are involved including the parentage of the appellant and her allegations of collusion between the landlord and the respondents 2 to 9, and the

523

executing court had, therefore, invited the parties to lead their evidence in support of their respective cases. The High Court in the circumstances, should not have closed the matter finally without waiting for the evidence. We, therefore, set aside the impugned judgment and remit the matter to the executing court for decision in the light of the observations made above, after permitting the parties to lead evidence. Her appeal is accordingly allowed but the parties shall bear their own costs of this Court.

11. So far Renu Sharma's matter is concerned, the situation is very different. The judgments of the Additional Rent Controller, Delhi and the Rent Control Tribunal, Delhi, indicate that although the adequate liberty was given to the present appellant to lead evidence in support of their cases, they never availed of the same and went on delaying the proceedings by repeated prayers of adjournment. They have

also pointed out to the other circumstances adverse to the case of the appellants, including the facts that the rent was paid to the landlord by their mother and brothers and never by them, and they are young girls in the family who are being looked after by the elders. We are, in the circumstances, of the view that they must be held to be effectively represented by the named judgment-debtors. Their appeal is accordingly dismissed with costs.

N.P.V.

Appeal dismissed.

524

JUDIS