

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 29-08-2016****Judgment delivered on 02-12-2016****WP227 No. 301 of 2016**

1. Anil Gupta (Now Deceased) S/o Late Shivdas Gupta
2. Sunil Gupta, S/o Late Shivdas Gupta, Aged About 61 Years
3. Arun Gupta, S/o Late Shivdas Gupta, Aged About 59 Years
4. Rajendra Gupta, S/o Late Shivdas Gupta, Aged About 58 Years
5. Shailendra Gupta, S/o Late Shivdas Gupta, Aged About 56 Years
6. Dharendra Gupta, S/o Late Shivdas Gupta, Aged About 54 Years

All R/o Nayapara, Raipur, Police Station And Post Raipur,
Civil And Revenue District Raipur (Chhattisgarh)

---- Petitioner

Versus

1. Thamman Singh (Now Deceased) S/o Late Biram Singh, R/o Civil Lines, Raja Talab, Shukla Colony, Raipur, Civil And Revenue District Raipur, Chhattisgarh, Police Station And Post Raipur, Civil And Revenue Distt. Raipur, Chhattisgarh

Through The General Power Of Attorney Holder Sardar Hardayal Singh, S/o Late Thamman Singh, Aged About 54 Years, R/o Raja Talab, Shukla Colony, Raipur, Police Station And Post Raipur, Civil And Revenue Distt. Raipur, Chhattisgarh

2. Hardayal Singh, S/o Thamman Singh, Aged About 54 Years R/o Raja Talab, Shukla Colony, Raipur, Tahsil And District Raipur, (Chhattisgarh)

---- Respondent

And

WP227 No. 305 Of 2016

1. Shivkumar Gupta S/o Late Shri Chhedilal Gupta, Aged About 68 Years R/o Nayapara, Raipur (Presently At Raigarh Bada, Civil Lines, Raipur) Police Station And Post Civil Lines, Raipur, Civil And Revenue District Raipur, Chhattisgarh

---- Petitioner

Vs

1. Thamman Singh (Now Deceased) S/o Late Biram Singh, R/o Civil Lines, Raja Talab, Shukla Colony, Raipur, Police Station And Post Raipur, Civil And Revenue District Raipur, Chhattisgarh.

Through The General Power Of Attorney Holder Sardar Hardayal Singh, S/o Late Thamman Singh, Aged About 54 Years, R/o Raja Talab, Shukla Colony, Raipur, Police Station And Post Raipur, Civil And Revenue Distt. Raipur, Chhattisgarh.

2. Hardayal Singh, S/o Thamman Singh, Aged About 54 Years R/o Raja Talab, Shukla Colony, Raipur, Tahsil And District Raipur, (Chhattisgarh)

---- Respondent

For Petitioners

Shri Sumesh Bajaj, Advocate

For Respondent
(Hardayal Singh)

Shri H.B. Agrawal, Sr. Advocate with
Ms. Nand Kumari Kashyap, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

1. Since the impugned orders in both the writ petitions have been passed by the Executing Court, which is executing

similar decree of eviction against the same tenant and the issues are common, both the writ petitions are decided by this Common order.

2. Petitioners/Decree Holders would call in question the legality and validity of the order passed by the Executing Court on 13.01.2016 whereby the Executing Court has refused to proceed with the execution of decree for eviction unless all the legal heirs of the deceased judgment-debtors are brought on record.
3. The skeletal facts outlining the factual conspectus would be briefly narrated so as to better comprehend the issues seeking adjudication.
4. The predecessors of the petitioner late Shri Shiv Das Gupta preferred a suit for eviction against Thamman Singh (since deceased) and represented by his legal heirs for his eviction from the suit premises. Civil suits No.125-A and 126-A of 2010 instituted on 21.11.1984 came to be decreed by the trial Court on 15.09.2010 and thereafter, the First Appeal bearing Civil Appeal Nos.20-A and 21-A of 2010 came to be dismissed by the District Judge, Raipur on 26.04.2014. The Second Appeal Nos. 201 and 202 of 2014 were also dismissed by this Court vide judgment dated 24.02.2014.

The decree has, thus, attained finality and is put to execution by the decree holders.

5. While the execution proceeding was going on, the decree holder moved an application under Section 151 of the Code of Civil Procedure, 1908 (for short “the CPC”) for conducting execution proceedings against the original tenant's son namely Hardayal Singh for issuance of warrant of possession or attachment warrant against him.
6. While considering the application, the trial Court has observed that even though the provisions contained under Order 22 Rules 3 & 4 of the CPC are not attracted in execution proceedings yet the Court can direct the landlord/decreed holder under its inherent powers to implead all the legal heirs. The said direction or observation has been made on the reasoning that the legal heirs would be responsible or liable to execute the decree to the extent of their share in the suit property which they have received from the deceased judgment-debtor, therefore, the decree holder should inform about all the legal heirs of the judgment debtor.
7. It is argued by Shri Sumesh Bajaj, learned counsel appearing for the petitioners, that the legal heirs of the

deceased tenant having acquired the tenancy as joint tenants and not as tenants in common, the execution application can proceed against one of the legal heirs, who is in possession of the property and all the legal heirs of the deceased-tenant are not required to be impleaded in the execution proceedings. Shri Bajaj would place reliance on **H.C. Pandey v G.C. Paul¹, Harish Tandon v. Addl. District Magistrate, Allahabad U.P. and others²** and **Ashok Chintaman Juker and others v. Kishore Pandurang, Mantri and another³**.

8. Per contra, Shri H.B. Agarwal, learned Senior Counsel appearing with Ms. Nand Kumari Kashyap, learned counsel appearing for the respondent, would submit that all the legal heirs of the deceased judgment-debtor are required to be brought on record for execution of the decree, therefore, the impugned order does not suffer from any infirmity.
9. The moot question arising for determination in these petitions is –

Whether the landlord is obliged to join all the legal heirs of the deceased tenant for continuing execution proceedings or impleadment of only one of the legal heirs of

1 AIR 1989 SC 1470

2 (1995) 1 SCC 537

3 AIR 2001 SC 2251

the deceased tenant, who is in possession of the property would be sufficient to execute the decree ?

10. The issue has been dealt with by the Supreme Court in 'n' number of decisions time and again and, as such, it is no longer *res integra*.
11. Way back the Supreme Court in **Gian Devi Anand v. Jeevan Kumar and Others**⁴ held that if the Rent Act in question defines a tenant in substance to mean 'a tenant who continues to remain in possession even after the termination of the contractual tenancy till a decree for eviction against him is passed', the tenant even after the determination of the tenancy continues to have an estate or interest in the tenanted premises and the tenancy rights both in respect of residential premises and commercial premises are heritable. The heirs of the deceased tenant in the absence of any provision in the Rent Act to the contrary will step into the position of the deceased tenant and all the rights and obligations of the deceased tenant including the protection afforded to the deceased tenant under the Act will devolve on the heirs of the deceased tenant. As the protection afforded by the Rent Act to a tenant after determination of the tenancy and to his heirs on the death of

4 (1985) 2 SCC 683

such tenant is a creation of the Act for the benefit of the tenants, it is open to the Legislature which provides for such protection to make appropriate provisions in the Act with regard to the nature and extent of the benefit and protection to be enjoyed and the manner in which the same is to be enjoyed. If the Legislature makes any provision in the Act limiting or restricting the benefit and the nature of the protection to be enjoyed in a specified manner by any particular class of heirs of the deceased tenant on any condition laid down being fulfilled, the benefit of the protection has necessarily to be enjoyed on the fulfillment of the condition in the manner and to the extent stipulated in the Act. The Legislature which by the Rent Act seeks to confer the benefit on the tenants and to afford protection against eviction, is perfectly competent to make appropriate provision regulating the nature of protection and the manner and extent of enjoyment of such tenancy rights after the termination of contractual tenancy of the tenant including the rights and the nature of protection of the heirs on the death of the tenant. Such appropriate provision may be made by the Legislature both with regard to the residential tenancy and commercial tenancy. It is, however, entirely for the Legislature to decide whether the Legislature will make

such provision or not. In the absence of any provision regulating the right of inheritance, and the manner and extent thereof and in the absence of any condition being stipulated with regard to the devolution of tenancy rights on the heirs on the death of the tenant, the devolution of tenancy rights must necessarily be in accordance with the ordinary law of succession.

12. In **H.C. Pandey** (supra), the Supreme Court held that it is now well settled that on the death of the original tenant, subject to any provision to the contrary either negating or limiting the succession, the tenancy rights devolve on the heirs of the deceased tenant. The incidence of the tenancy are the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs. There is no division of the premises or of the rent payable therefor. That is the position as between the landlord and the heirs of the deceased tenant. In other words, the heirs succeed to the tenancy as joint tenants. In the present case it appears that the respondent acted on behalf of the tenants, that he paid rent on behalf of all and he accepted notice also on behalf of all. In the circumstances, the notice served on the respondent was sufficient. It seems to this Court that the view taken in Ramesh Chand Bose AIR 1977 All 38 (supra)

is erroneous where the High Court lays down that the heirs of the deceased tenant succeed as tenants in common. In our opinion, the notice under Section 106 of the Transfer of Property Act served by the appellant on the respondent is a valid notice and therefore the suit must succeed.

13. Yet again in **Harish Tandon** (supra), the Supreme Court has followed **Gian Devi Anand** (supra) and approved **H.C. Pandey** (supra) to observe that in **H.C. Pandey** (supra), it was rightly said by this Court that after the death of the original tenant, subject to any provision to the contrary, the tenancy rights devolve on the heirs of the deceased tenants jointly. The incidence of the tenancy is the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs and there is no division of the premises or of the rent payable therefor and the heirs succeed to the tenancy as joint tenants.
14. Following **H.C. Pandey** (supra), the Supreme Court in **Ashok Chintaman Juker** (supra), held that decree passed in suit for eviction is binding on all members of original tenant's family who are covered by tenancy and when the deceased tenant had two sons, the impleadment of son who was residing in the tenant premises would be sufficient for execution of decree and the other son not residing in the

premises is not required to be impleaded, there being no such interest of making him a party to the eviction proceeding. It is held thus at para 16 :

16. In the case on hand, as noted earlier, on the death of the original tenant Chintaman the rent bills in respect of the premises in question were issued in the name of his elder son Kesrinath and on his death the rent bills were issued in the name of his widow Smt. Kishori Kesrinath Juker. It is not the case of the appellant No.1 that there was any division of the premises in question or that rent was being paid to the landlord separately by him. Indeed the appellant No.1 took the plea that he was paying the rent through Smt. Kishori Kesrinath Juker. Thus the tenancy being one, all the members of the family of the original tenant residing with him at the time of his death, succeeded to the tenancy together. In the circumstances the conclusion is inescapable that Smt. Kishori Kesrinath Juker who was impleaded as a tenant in the suit filed by the landlord represented all the tenants and the decree passed in the suit is binding on all the members of the family covered by the tenancy. In the circumstances the decree passed in terms of the compromise entered between the landlord and Smt. Kishori Kesrinath Juker can neither be said to be

invalid nor inexecutable against any person who claims to be a member of the family residing with the original tenant, and therefore, a 'tenant' as defined in Section 5 (11) (c). The position that follows is that the appellants have no right to resist on the ground that the decree is not binding on them. Further, the trial court and the appellate court concurrently held that the appellant No.1 has not been residing in the premises since 1962 i.e. when his elder brother Kesrinath was alive. Therefore, when the suit was filed in the year 1992 there was no necessity for the landlord to implead appellant No.1 or members of his family in the suit since he (landlord) had no cause of action for seeking a decree of recovery of possession from them. In that view of the matter the decree under execution does not suffer from any illegality or infirmity. Viewed from any angle the appellants have no justification on the facts as well as in law to resist execution of the decree for possession of the premises by the landlord. The Executing Court rightly rejected the objection filed by the appellants against execution of the decree and the appellate court and the High Court rightly confirmed the said order. This appeal being devoid of merit is dismissed with costs which is assessed at Rs.10,000/-.

15. In view of the foregoing, the law appears to be settled by the Supreme Court in umpteen number of decisions that in the event of death of original tenant, the tenancy devolves on the legal heirs as joint tenants, therefore, even when only one of the legal heirs of the deceased tenant, who is in possession of the property, is impleaded in execution proceedings, the Executing Court should proceed with the execution instead of directing the decree holder to implead other legal heirs of the tenant.
16. At this juncture, it is informed by the learned counsel appearing for the petitioner that one of the other legal heirs resides in America (USA), therefore, if the trial Court's order is complied the execution of the decree will be impossible and, thus, the impugned order, if it is allowed to stand would occasion failure of justice.
17. This Court is fully convinced with the submission made by the learned counsel appearing for the petitioner that since in view of the settled legal position, it would not be necessary to implead all the legal heirs of the deceased tenant to be joined in the execution proceedings, if the impugned order is allowed to stand, it would occasion failure of justice, therefore, it deserves to be quashed by this Court in exercise of its power of superintendence under Article 227

as held by the Supreme Court in **Surya Dev Rai v. Ram Chander Rai**⁵, **Shalini Shyam Shetty v. Rajendra Shankar Patil**⁶ and **Sameer Suresh Gupta through PA Holder Vs. Rahul Kumar Agarwal**⁷.

18. Accordingly, both the impugned orders are set aside and the Executing Court is directed to proceed with the execution of decree against the present legal heir Hardayal Singh.
19. As an upshot, both the petitions are allowed. No order as to costs.

Sd/-
Judge
Prashant Kumar Mishra

Gowri

5 (2003) 6 SCC 675

6 (2010) 8 SCC 329

7 (2013) 9 SCC 374