

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.286 of 2014

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1. Surjeet Singh Son of late Wajant Singh Khalsa Resident of Mohalla- Club Road, P.S. Mithanpura, District- Muzaffarpur at present resident of House No.2510, H.I.F. Flat, Phase II, Urban Estate Durga, Ludhiyana.
 2. Harbhajan Singh @ Hari Bhajan Singh Manga, Son of late Wajant Singh Khalsa Resident of Mohalla- Club Road, P.S. Mithanpura, District Muzaffarpur at present resident of Ground Floor House No.13, Gurugyan Bihar, Jendeli, Ludhiyana.
 3. Harjeet Singh Son of late Wajant Singh Khalsa Resident of Mohalla- Club Road, P.S. Mithanpura, District- Muzaffarpur at present resident of First Floor House No.13, Gurugyan Bihar, Jendeli, Ludhiyana.

.... Appellant/s

Versus

1. Umesh Prasad Chaudhary Son of Lakshman Prasad Chaudhary Resident of Mohalla- Mohammadpur Kazi, Chhoti Kalyani, P.S. Mithanpura, Town & District- Muzaffarpur.
2. Gurjeet Singh Son of late Wajant Singh Khalsa Resident of Mohalla- Club Road, P.S. Mithanpura, District- Muzaffarpur Surjeet Singh.
3. Jasveer Kaur Daughter of late Wajant Singh Khalsa All resident of Mohalla- Club Road, P.S. Mithanpura, District- Muzaffarpur at present resident of First Floor House No.13, Gurugyan Bihar, Jendeli, Ludhiyana.

.... Respondent/s

with

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Second Appeal No. 60 of 2014

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Gurjeet Singh Son Of Late Wajant Singh Khalsa Resident Of Mohalla- Club Road, P.S. Mithanpura, District- Muzaffarpur

.... Appellant/s

Versus

1. Umesh Prasad Chaudhary Son Of Lakshman Prasad Chaudhary Resident Of Mohalla- Mohammadpur Kazi, Chhoti Kalyani, P.S. Mithanpura, Town & District- Muzaffarpur



2. Surjeet Singh
3. Harbhajan Singh
4. Harjeet Singh All Son Of Late Wajant Singh Kalra

.... Respondent/s

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Appearance :
(In SA No. 286 of 2014)

For the Appellant/s : Mr. Arun Kumar Lal, Adv.

For the Respondent/s : Mr.

(In SA No. 60 of 2014)

For the Appellant/s : Mr. S.S. Dwivedi, Sr. Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 13-07-2017

Heard learned counsel for the appellants in both the appeals.

Both these appeals arise out of the common judgment and decree by the appellate court below granting the decree of eviction to the plaintiff. Both these appeals have been heard together on the prayer of the learned counsel for the appellants.

The suit for eviction was filed by the plaintiff-respondent against the tenant-defendant on the ground of personal necessity. The suit was, however, dismissed by the learned court below. The appeal was preferred by the plaintiff-respondent. During the pendency of the appeal, the tenant-defendant died and was substituted by his four sons. By the impugned judgment and decree in both the appeals, the appellate court below has allowed the appeal and granted the eviction decree to the plaintiff.



The S.A. No. 286 of 2014 has been preferred by the three substituted heirs of the tenant-defendant-respondents in appeal in the learned court below whereas S.A. No. 60 of 2014 has been preferred by the remaining one substituted heir.

Mr. S.S. Dwivedi, learned senior counsel for the appellant in S.A. No. 60 of 2014 has submitted that the appellate court below has wrongly applied the Explanation-II of Section 2 (h) of the Bihar Buildings (Lease, Rent and Eviction) Control, Act (hereinafter referred to as the 'B.B.C. Act') holding that the successor of the tenant after his death continue in possession of the tenanted premises only for one year. It has been contended that the said provision is attracted only in a case where the tenant continues in possession of the tenanted premises after the termination of the tenancy but in the present case, the tenant died before termination of his tenancy. It has also been submitted that the finding on the issue of personal necessity as recorded by the appellate court cannot be sustained in the facts and circumstances of the case as well as on the basis of evidence on record.

Learned counsel for the appellants in S.A. No. 286 of 2014 has submitted that the appellate court below has committed error in passing the impugned decree against the appellants without service of notice upon the appellants after their substitution in the appeal.



With regard to the extinguishment of the right of the present appellants to continue in possession after expiry of the limited period of one year after the death of the original tenant as envisaged in Explanation-II of Section 2 (h) of the B.B.C. Act, learned counsel for the appellants has made submissions on similar lines as made on behalf of the appellant in S.A. No. 60 of 2014.

After considering the submissions and the perusal of the judgments of both the courts below, it is pellucid that the original tenant-defendant was admittedly in occupation of the suit shop as tenant of the plaintiff and was using the same as a clinic for practising as homeopathic doctor. The suit for eviction was filed by the plaintiff seeking the eviction of the original tenant-defendant on the ground of personal requirement of the suit shop for establishing his clinic for practicing as allopathic doctor as well as a medicine shop. After dismissal of the suit, the plaintiff preferred an appeal and during the pendency of the appeal, the original tenant-defendant died and was substituted by his four sons who are appellants in these two appeals as above. The appellate court below, on the basis of the provision as contained in Explanation-II of Section 2 (h) of the B.B.C. Act, has come to the conclusion that the right of the substituted heirs of the original tenant-defendant to continue in possession of the tenanted premises has stood extinguished after expiry of the period of one year



from the death of the original tenant-defendant.

For ease of reference the provision as contained in Section 2 (h) of the B.B.C. Act is noticed herein below:-

“S. 2(h) ‘Tenant’ means any person by whom, or on whose account rent is payable for a building and includes-

(i) a person continuing in possession after the termination of the tenancy in his favour; and

(ii) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(iii) In the event of death of the person continuing in possession after the termination of his tenancy subject to the order of succession and condition specified, respectively, in Explanations I and II to this clause, such of the aforesaid person’s-

(a) spouse

(b) son or unmarried daughter or where there are both, both of them.

(c) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(d) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Explanation-1-



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Explanation II-If the person, who acquires by succession, the right to continue in possession after the termination of tenancy, was not financially dependent on the deceased person on the date of his death, such successor shall acquire such right for a limited period of one year and on the expiry of the period or on his death whichever is earlier, the right of such successor to continue in possession after the termination of the tenancy shall become extinguished.

Explanation-III-

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The facts are not in dispute in the present case that after the death of the original tenant-defendant the present appellants are in possession of the suit premises as the successors of the deceased tenant. It is not the case of the appellants of both the appeals either in the appellate court below or before this Court that they were financially dependent upon the deceased tenant who was their father. The fact is also not in dispute that the suit shop was held by the deceased tenant where he practiced as a homeopathic doctor which involved personal specialization. The emphasis on behalf of the appellants, however, is upon the aspect that there was no termination of the tenancy of the original tenant as he died before passing of the decree of eviction, as such, the Explanation-II of Section 2 (h) would not be applicable in the facts of the present case. In the opinion of this Court, this submission on behalf of the appellants is misconceived in view of the scheme and provisions of the B.B.C. Act.

It is by now well settled that the B.B.C. Act is a self contained Act in the matter for determination of rights and obligations of the landlord and tenant for the tenancy covered by it and the provision of the Transfer of Property Act to that extent are not applicable. Section 11 of the B.B.C. Act provides protection to a tenant in possession of any building from eviction except in execution of a decree passed by the court on one or more grounds mentioned



therein. It would be significant to notice that such protection to the tenant in possession of the tenanted premises has been granted till the execution of the eviction decree in accordance with the said Act. In other words, he remains in occupation of the tenanted premises as tenant even after incurring liability for eviction until his dispossession in execution of the eviction decree against him in accordance with the said Act. There is no provision in the B.B.C. Act like Section 111 of the Transfer of Property Act for determination of lease or tenancy. The inference is, thus, inevitable that the moment the landlord institutes a suit for eviction of the tenant on one or more grounds mentioned in Section 11 of the B.B.C. Act, though the relationship of landlord and tenant comes to an end but the tenant continues in possession of the tenanted premises by virtue of the provisions of the B.B.C. Act as statutory tenant. This jural relation continues till the decree for eviction is executed.

The use of the term 'after termination of tenancy' in the inclusive definition of a tenant as made in Section 2 (h) of the B.B.C. Act must be taken to refer to a period prior to the passing of the order/decreed of eviction. It is not possible to align with the submission as made on behalf of the appellants that the said term refers to termination of tenancy-cum-statutory protection which can be brought about only by a decree/order of eviction. Such interpretation of the



said term does not reflect the true intention of the legislature as it will lead to anomalous position. The observations by a Full Bench of this Court in the case of **Raj Kumar Prasad Vs. Uchit Narain Singh, 1980 P.L.J.R. 195** support this view as follows:-

“.....Therefore, once a person is inducted as a tenant either under a contract or otherwise and he is in possession of any building, he continues to remain a tenant within the meaning of section 2 (f) until he is evicted from the premises in question in execution of a decree passed by a court of competent jurisdiction on any of the grounds enumerated in Section 11. The initial induction of a tenant may be by a contract or may be statutory. That is of no consequence. Once the Rent Act is applicable to his case, he shall continue to remain a tenant within the meaning of the Rent Act until he is evicted by the process of execution of a decree of a competent court

.....

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According to the statutory provisions of the Rent Act, of which notice has been taken earlier, as soon as a default occurs within the meaning of Section 11 (1) (d), the landlord has the right to get the tenant evicted but until the tenant who is liable to be evicted is so evicted in execution of a decree passed by a court of competent jurisdiction, he continues to remain a statutory tenant within the



meaning of the Rent Act. There is no forfeiture in the eye of law. The tenant becomes liable to be evicted and forfeiture comes into play only if he has incurred the liability to be evicted under the Rent Act and not otherwise. There is no forfeiture, as stated above, in the eye of law because even if the tenancy is determined under the T.P. Act, the tenant continues to be a statutory tenant.....

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.If he continues to remain a landlord by statutory fiction and the defaulter tenant continues to be a tenant by such fiction, the jural relationship between the parties continues so long as the decree for eviction is not executed
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When the tenancy for all practical purposes has been determined, the Statute still enjoins that the landlord is entitled to receive rent and casts an obligation on the tenant to pay not only the arrear of rent but also the current rent month by month.....”

(emphasis supplied)

Basically, a tenancy is a creation of a contract between the landlord and the tenant. It is by virtue of the provision in the special statute like Rent Act that the precarious position of a tenant who has



incurred liability for eviction has been mitigated allowing him to continue in possession over the tenanted premises even after incurring such liability till his eviction in execution of the decree passed against him in accordance with the provisions of the Rent Act. Manifestly, therefore, 'ex tenant' remains a tenant by force of law and the right of heirs after his death to continue in possession of the tenanted premises is also to be governed by the said law (Rent Act) which only gives a restricted right to such heir/successor as enumerated in the provisions of Section 2(h) of the B.B.C. Act.

As above mentioned, it is not the case of the appellants that they were financially dependent upon the original tenant and as such they cannot escape the rigours of Explanation-II of Section 2 (h) of the B.B.C. Act restricting the right to remain in possession for one heir after the death of the original tenant. The appellate court below, therefore, has rightly come to the conclusion that after expiry of the said period of one year, the right of the appellants as successors of original tenant to continue in possession stood extinguished.

So far as the claim of the appellants in S.A. No. 268 of 2014, it has been accepted by learned counsel for the appellants that they have no independent or different case other than that of the appellant in S.A. No. 60 of 2014.

For the aforesaid reasons and discussions, this Court does



not find any substantial questions of law arising for consideration in the two appeals, which are, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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