

SHANTILAL THAKORDAS & ORS.

v.

CHIMANLAL MAGANLAL TELWALA

August 23, 1976

[A. N. RAY, C.J., N. L. UNTWALIA AND P. N. SHINGHAL, JJ.]

Bombay Rents, Hotel and Lodging House Rates Control Act 1947—Section 13(1) (b)—Suit for eviction on the ground of bona fide and personal need of a landlord—Whether right to sue survives to his heirs—Requirement of firm in which landlord is a partner whether his requirement—Whether decree passed in favour of landlord can be disturbed on his death.

Thakordas, father of 3 appellants, was the owner of the suit premises. He was a partner in a firm which had 3 other partners. One of the partners was appellant No. 1, the son of Thakordas and two partners were outsiders. A suit for eviction was filed against the respondent on the ground that Thakordas required the premises for the said firm reasonably and bona fide within the meaning of s. 13(1)(g) of the Bombay Rent Act, 1947. The trial court passed a decree for eviction in respect of a portion of the premises. Thereafter, Thakordas died and the present appellants who are his sons filed an appeal. Likewise the tenant also filed an appeal. Appellants No. 1 and 2 together with some outsiders continued the firm. However, appellant No. 3 a minor son of Thakordas was not admitted to the benefit of the partnership. The First Appellate Court confirmed the decree of the trial court. The revision application filed by the tenant was allowed and one filed by the appellants was dismissed by the High Court relying on the decision of this Court in *Phul Rani & Ors. v. Naubat Rai Ahluwalia* [1973] 3 SCR 679.

In an appeal by special leave, the appellants contended :

1. Phul Rani's case was not correctly decided and the right of Thakordas survived in favour of the appellants.
2. The requirement of the firm in which the landlord is a partner will be the requirement of the landlord.
3. Since the decree had already been passed in favour of Thakordas before his death it could not be disturbed on his death either in appeal or in revision.

Dismissing the appeal,

HELD : (1) Phul Rani's case was wrongly decided. If the law permitted the eviction of the tenant for the requirements of the landlord "for occupation as a residence for himself and members of his family" then the requirement was both of the landlord and the members of his family. On his death, the right to sue did survive to the members of the family of the deceased landlord. After the death of the original landlord the senior member of his family takes his place, and is well competent to continue the suit for eviction for his occupation and the occupation of the other members of the family. [343 H, 344 A—B]

(2) It is doubtful whether the requirement of the premises by the landlord for occupation by the firm in which he is a partner will tantamount to occupation by himself. Even if it is assumed that it will amount to occupation by the landlord, since in the new firm the minor son of Thakordas was not admitted to the benefits of the partnership he had no interest in the said firm. Therefore, as far as appellant No. 3 is concerned, he could in no sense be said to require the premises. [344 C—G]

(3) The conclusion in Phul Rani's case that if a decree had been already passed in favour of the plaintiff that could not be disturbed on his death is not correctly decided. In fact, no final opinion was expressed in Phul Rani's case on that question. [344 H, 345 A]

A *Phul Rani & Ors. v. Naubat Rai Ahluwalia* [1973] 3 S.C.R. 679, overruled.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 487-488 of 1976.

(Appeal by Special Leave from the Judgment and Order dated 19.12.1973 of the Gujarat High Court in Civil Revision Application No. 540 and 678 of 1970).

B *S. K. Dholakia and R. C. Bhatia*, for the appellants.

R. P. Bhatt and H. S. Parihar for *I. N. Shroff*, for the respondent.

The Judgment of the Court was delivered by

C UNTWALIA, J.—In these appeals by special leave, the question which falls for our determination is whether the decision of a Bench of this Court consisting of two learned Judges in *Phul Rani & Ors. v. Naubat Rai Ahluwalia*⁽¹⁾ is correct. If not, whether the appellants are entitled to get a decree for eviction in respect of the suit premises against the defendant respondent.

D Thakordas Bhagwandas—the father of the three appellants was owner of the suit premises. He was a partner in a partnership firm styled as Jai Hind Silk Weaving Works. There were three more partners in the firm—one of whom was Shantilal Thakordas, appellant No. 1, son of Thakordas Bhagwandas. The other two were outsiders. The suit was filed against respondent Chimanlal Maganlal Telwala for his eviction from the premises on several grounds. The only ground which need to be mentioned for the purpose of the disposal of this appeal is Thakordas's claim of requiring the premises reasonably and bona-fide for occupation by himself within the meaning of section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The necessity pleaded by the original plaintiff was that he required the premises for the use of the partnership firm aforesaid in which he was a partner. The Trial Court decreed the suit in part on April 30, 1965 and passed a decree for eviction of the tenant from a portion of the suit premises. Both sides went up in appeal before the First Appellate Court. Thakordas was dead and his heirs, namely, the present appellants were the appellants in one appeal and respondents in the other. The first Appellate Court by its judgment dated November 10, 1966 maintained the partial decree made by the Trial Court with slight modification. Both the parties went in revision before the Gujarat High Court. The High Court set aside the decree dated November 10, 1966 of the First Appellate Court and remanded the case to it for a fresh disposal of the appeal after trying out an additional issue of comparative hardship of the landlord and the tenant as also the question as to whether the substituted heirs of the original plaintiff required the premises reasonably and bona-fide for their occupation.

H The first Appellate Court after remand again passed a decree for eviction from a portion of the suit premises on March 31, 1970. Two

(1) (1973) 3 S.C.R. 679.

revisions were taken to the High Court—one by the appellants and the other by the respondent. Following the decision of this Court in *Phul Rani's* case (*supra*) the High Court allowed the respondent's revision, rejected that of the appellants and dismissed their suit for eviction *in toto*. Hence these appeals.

The foremost and the first question urged before us by Mr. Dhoklakia was that *Phul Rani's* case was not correctly decided. We agree with this contention and say with respect that we do not subscribe to the view expressed by the Bench of this Court in that case. The original plaintiff in that case had filed the application for eviction under section 14(1)(e) of the Delhi Rent Control Act, 1958. The application was dismissed in the first instance by the Additional Rent Controller, Delhi on the ground that the notices to quit were not valid. Plaintiff filed an appeal but died during its pendency. His widow, son and two married daughters and two children of a deceased daughter were allowed to be substituted by the Rent Control Tribunal where the appeal was pending. The case was remanded by the Tribunal and after remand the Additional Rent Controller held that some of the substituted persons require the premises bona-fide for their occupation. The tenant's appeal to the Tribunal failed. The High Court of Delhi on a further appeal by the tenant took the view that the right to sue did not survive to the heirs of the plaintiff and on that ground it dismissed the ejectment application. The case came up to this Court. The view of the High Court was affirmed. The relevant words of personal requirement of the premises in section 14(1)(e) of the Delhi Act are : "for occupation as a residence for himself and members of his family." The original plaintiff had pleaded:

"The premises are required bonafide by the petitioner for occupation as a residence for himself and members of his family and that the petitioner has no other reasonably suitable residential accommodation."

This Court took the view :

"Thus, the requirement pleaded in the ejectment application and on which the plaintiff has founded his right to relief is his requirement, or to use an expression which will effectively bring out the real point, his personal requirement. If the ejectment application succeeds—we will forget for a moment that the plaintiff is dead—the premises in the possession of the tenant may come to be occupied by the plaintiff and the members of his family but that does not make the requirement pleaded in the application any the less a personal requirement of the plaintiff. That the members of his family must reside with him is his requirement, not theirs. Such a personal cause of action must perish with the plaintiff."

In our considered opinion in face of the wordings of section 14(1)(e) of the Delhi Act, the view expressed in *Phul Rani's* case, as stated

A above, is not correct. If the law permitted the eviction of the tenant for the requirement of the landlord "for occupation as a residence for himself and members of his family", then the requirement was both of the landlord and the members of his family. On his death the right to sue did survive to the members of the family of the deceased landlord. We are unable to take the view that the requirement of the occupation of the members of the family of the original landlord was his requirement and ceased to be the requirement of the members of his family on his death. After the death of the original landlord the senior member of his family takes his place and is well competent to continue the suit for eviction for his occupation and the occupation of the other members of the family. Many of the substituted heirs of the deceased landlord were undoubtedly the members of his family and the two married daughters and the children of a deceased daughter in the circumstances could not be held to be not members of the family of the deceased landlord.

But even so the appellants cannot succeed in this appeal. Firstly it is doubtful whether the requirement of the premises by the landlord for occupation by the partnership firm in which he is a partner will be tantamount to "occupation by himself" i.e. by the landlord. D Certain decisions of some High Courts were brought to our notice taking the view that it is so. We refrain from expressing our opinion in that regard. We assume, as seems to have been the view of the High Court in this case, that the requirement of the premises for the use of a partnership firm by the landlord in which he is a partner is covered by section 13(1)(g) of the Bombay Act. Yet on the facts of this case there is an insurmountable difficulty in the way of the appellants. E From the judgment dated March 31, 1970 of the First Appellate Court it would appear that on the death of Thakordas in June, 1965 a new partnership was constituted. One of his sons Shantilal who was a partner from before was taken as a partner in the new partnership alongwith Thakordas's another son Dhanvantlal Thakordas, appellant No. 2. There were some outsider partners. F Harish Thakordas, appellant No. 3, a minor son of Thakordas had not been admitted to the benefits of the partnership. He had, therefore, no interest in the partnership firm Jai Hind Silk Weaving Works. The Appellate Court took the view that the substituted plaintiffs wanted to use the suit premises for the purpose of godown for keeping the yarn clothes and machinery articles and also for a retail shop and show room of the partnership. This in no sense could be the requirement of appellant Harish even assuming that it could be said to be the requirement of his two elder brothers appellants 1 and 2. In that view of the matter we have got to dismiss the appeal although Mr. Dhoklakia, learned counsel for the appellants succeeded in persuading us to differ from the ratio of *Phul Rani's* case. G

H Counsel for the appellants endeavoured to bring their case within one of the exceptions noted in *Phul Rani's* case. He submitted that a decree had already been passed in favour of the original plaintiff by the Trial Court and that could not be disturbed on his death either in appeal or revision. We do not accept the contention as sound or

correct. In *Phul Rani's* case no final opinion was expressed on this question. Moreover, we find that on the earlier occasion the High Court had set aside the decree and remanded the suit to the First Appellate Court for a fresh decision. There was, therefore, no decree in existence to attract the exception.

A

In the result the appeals fail and are dismissed but without costs.

B

P.H.P.

Appeals dismissed.